

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI

BRYCE E. MASTERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.
	)	16-CV-01045-GAF
CITY OF INDEPENDENCE,	)	
MISSOURI, et al.,	)	
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS - VOLUME V  
BEFORE THE HONORABLE GARY A. FENNER  
SENIOR UNITED STATES DISTRICT JUDGE  
DECEMBER 13, 2018  
KANSAS CITY, MISSOURI

APPEARANCES

FOR THE PLAINTIFF:  
MR. KIRK R. PRESLEY  
MR. MATTHEW A. McCOY  
MS. JILL A. PRESLEY  
Presley & Presley  
4801 Main Street, Suite 375  
Kansas City, Missouri 64112  
  
MR. JOHN C. BURTON  
128 North Fair Oaks Avenue  
Pasadena, California, 91103

Proceedings recorded by mechanical stenography, transcript  
produced by computer

KATHERINE A. CALVERT, RMR, CRR  
FEDERAL OFFICIAL COURT REPORTER  
CHARLES EVANS WHITTAKER COURTHOUSE  
400 EAST NINTH STREET  
KANSAS CITY, MISSOURI 64106

APPEARANCES  
(continued)

FOR THE PLAINTIFF (continued):

MR. DANIEL J. HAUS  
The Haus Law Firm LLC  
7926 East 171st Street, Suite 106  
Belton, Missouri 64012

FOR THE DEFENDANT RUNNELS:

MR. KEITH A. CUTLER  
MS. DANA T. CUTLER  
MS. CHARNISSA E. HOLLIDAY-SCOTT  
James W. Tippin & Associates  
21 West Gregory Boulevard  
Kansas City, Missouri 64114

I N D E X

Page

NOVEMBER 27, 2018

VOLUME I

MICHAEL DREILING

Direct examination by Mr. Presley . . . . .	14
Cross-examination by Mr. Cutler . . . . .	20

I N D E X  
(continued)

Page

DECEMBER 10, 2018

VOLUME II

Plaintiff's opening statement. . . . . 96

Defendant's opening statement. . . . . 109

PLAINTIFF'S EVIDENCE

ANDREW DENNIS

Direct examination by Mr. Burton. . . . . 128

Cross-examination by Mr. Cutler . . . . . 164

I N D E X  
(continued)

Page

DECEMBER 11, 2018

VOLUME III

SCOTT GRASHER

Direct examination by Mr. Burton . . . . .	195
Cross-examination by Mr. Cutler . . . . .	205

ED TURNER

Direct examination by Mr. Presley . . . . .	206
Cross-examination by Mr. Cutler . . . . .	225
Redirect examination by Mr. Presley . . . . .	231
Recross-examination by Mr. Cutler . . . . .	233
Further redirect examination by Mr. Presley . . . . .	234

STEPHEN DAVIDSON

Direct examination by Mr. McCoy . . . . .	235
Cross-examination by Mr. Cutler . . . . .	248

MICHAEL LEONESIO

Direct examination by Mr. Burton . . . . .	255
Cross-examination by Mr. Cutler . . . . .	311
Redirect examination by Mr. Burton . . . . .	331

ROGER BRYCE BLACKMORE

Direct examination by Mr. Presley . . . . .	332
Cross-examination by Mr. Cutler . . . . .	343
Redirect examination by Mr. Presley . . . . .	345
Recross-examination by Mr. Cutler . . . . .	347

STACY MASTERS

Direct examination by Mr. Presley . . . . .	349
Cross-examination by Mr. Cutler . . . . .	377

Stipulation of facts were read . . . . .	403
--	-----

I N D E X  
(continued)

Page

DECEMBER 12, 2018

VOLUME IV

TERRIE PRICE

Direct examination by Mr. Presley . . . . .	424
Cross-examination by Mr. Cutler . . . . .	440
Redirect examination by Mr. Presley . . . . .	450
Recross-examination by Mr. Cutler . . . . .	451

MICHAEL J. DREILING

Direct examination by Mr. Presley . . . . .	452
Cross-examination by Mr. Cutler . . . . .	461
Redirect examination by Mr. Presley . . . . .	481

KAREN GROSSMAN TABAK

Direct examination by Mr. Presley . . . . .	483
Cross-examination by Mr. Cutler . . . . .	493

STEVEN MICHAEL ARKIN

Direct examination by Mr. Presley . . . . .	497
Cross-examination by Mr. Cutler . . . . .	509

STANLEY AUGUSTIN

Direct examination by Mr. Presley . . . . .	523
Cross-examination by Mr. Cutler . . . . .	532
Redirect examination by Mr. Presley . . . . .	538
Recross-examination by Mr. Cutler . . . . .	540

DEFENDANT'S EVIDENCE

EVAN BATEMAN

Direct examination by Mr. Cutler. . . . .	553
Cross-examination by Mr. McCoy. . . . .	556

SCOTT McKEE

Direct examination by Mr. Cutler. . . . .	558
Cross-examination by Mr. Presley. . . . .	562

KURT WYCKOFF

Direct examination by Mr. Cutler. . . . .	562
---	-----

DARRELL SCHMIDLI

Direct examination by Mr. Cutler. . . . .	565
Cross-examination by Mr. Presley. . . . .	570

I N D E X  
(continued)

Page

TOM DAILEY

Direct examination by Mr. Cutler. . . . . 573

Cross-examination by Mr. Presley. . . . . 579

Jury instructions conference . . . . . 584

I N D E X  
(continued)

Page

DECEMBER 13, 2018

VOLUME V

Jury instructions conference . . . . .	604
GARY MICHAEL VILKE	
Direct examination by Mr. Cutler. . . . .	618
Cross-examination by Mr. Burton . . . . .	635
TIMOTHY RUNNELS	
Direct examination by Mr. Cutler. . . . .	636
Cross-examination by Mr. Presley. . . . .	653
Redirect examination by Mr. Cutler. . . . .	676
Plaintiff's closing argument . . . . .	692
Defendant's closing argument . . . . .	707
Plaintiff's rebuttal closing argument. . . . .	730



I N D E X  
(continued)

Page

DECEMBER 14, 2018

VOLUME VI

Verdict. . . . .	767
Plaintiff waives punitive damage opening statement . . . .	772
Defendant's punitive damage opening statement. . . . .	773
PLAINTIFF'S EVIDENCE ON PUNITIVE DAMAGES	
Stipulation of facts . . . . .	775
DEFENDANT'S EVIDENCE ON PUNITIVE DAMAGES	
TIMOTHY RUNNELS	
Direct examination by Mr. Cutler. . . . .	776
Cross-examination by Mr. Presley. . . . .	783
Plaintiff's punitive damage closing argument . . . . .	788
Defendant's punitive damage closing argument . . . . .	791
Plaintiff's rebuttal punitive damage closing argument. . .	798
Verdict on punitive damages. . . . .	800

# INDEX OF EXHIBITS

EXHIBIT NO.	DESCRIPTION	OFFERED	RECEIVED
FOR THE PLAINTIFF:			
1	IPD mission statement	208	208
4	Taser information	247	247
5	Taser warnings	247	247
8	CEW user update	247	247
12	Photograph	202	203
37	Photograph	232	232
39	Taser training	247	247
41	Photograph	194	194
42	Photograph	194	194
44	Response to force policy	210	210
47	Taser download	194	194
53	Taser user certificate test	247	247
60	Bryce Masters' school transcript	354	354
79	Photograph	354	354
80	Photograph	357	357
100	Discharge summary	528	528
148	IPD general order code of conduct	208	208
149	IPD general order	210	210
156	Runnels' report	660	660

INDEX OF EXHIBITS  
(continued)

EXHIBIT NO.	DESCRIPTION	OFFERED	RECEIVED
157	AMR report	525	525
158	Centerpoint medical records	525	525
161	Ability KC medical records	426	427
162	Rehabilitation Institute medical records	426	427
169	DVD dash cam video	193	193
170	DVD dash cam video	193	194
171	DVD cell phone recording	194	194
172	Photograph	660	660
180	Photograph	558	558
183	Photograph	364	364
184	Photograph	364	364
185	Photograph	364	364
187	Photograph	202	203

INDEX OF EXHIBITS  
(continued)

EXHIBIT NO.	DESCRIPTION	OFFERED	RECEIVED
FOR THE DEFENDANT:			
D13	Toxicology report	536 & 541	536 & 541
D18	Report of Panelipse	535	535
D19	Consultation note	541	541
D23	Neurology progress note	534	534
D36	CV of Gary Vilke	621	621

1 DECEMBER 13, 2018

2 MORNING SESSION

3 (Court in session at 8:20 a.m.)

4 (The following proceedings were had in the courtroom  
5 out of the presence of the jury:)

6 THE COURT: Thank you.

7 Good morning.

8 Mr. Presley, you've proposed some instructions --

9 MR. PRESLEY: Yes, and in our haste to get these  
10 printed down here, the Instruction 14 omitted a critical  
11 portion. I'm having my office revise it and I expect to have  
12 it shortly, and that is in paragraph first the wording after  
13 "continued deploying Taser into plaintiff's chest." It should  
14 read "for 15 seconds." So I provided a set and walked Mr.  
15 Cutler through the changes that we would propose, and these are  
16 based off Rhys' most recent package. So the numbers would  
17 correspond to his email of last night.

18 So as it relates to the packaging instruction  
19 No. 13, our record would be that we omit 15, and then  
20 Instructions 14 and 16 or 14 through 15, however the Court  
21 chooses to number them, would be so directed. So we have taken  
22 Rhys' version of Instruction No. 14 and we have modified the  
23 conduct to, as I stated, "First, the defendant continued  
24 deploying Taser current into plaintiff's chest for 15 seconds  
25 when arresting him." We would omit the "actively resisting"

1 since it is a stipulated fact, and from that point forward  
2 there was no resistance.

3 16 merely removes some brackets that were still  
4 present in the damage instruction.

5 Instruction 20, which is the packaging instruction,  
6 in essence, for the punitive liability finding, Instruction  
7 No. 20. As written, it was, "or under 14 or 18," which are the  
8 two verdict directing instructions for the respective Taser  
9 and drop. It did not allow for a finding of punitive damage  
10 liability on both the Taser and the drop; and as such, we  
11 modified that to read, "and/or find in favor of plaintiff under  
12 Instruction 18 and/or 14," or 18 in both places.

13 Now, we have omitted the phrase in Rhys' proposed  
14 instruction about -- and the way it reads is simply, "Resisting  
15 arrest under Instruction No. 15." Even if these modifications  
16 are not accepted or 15 is still included, we would make the  
17 record that it should be actively resisting arrest under  
18 Instruction No. 15 consistent with the conduct submitted.

19 Then as it relates to Verdict C, we've modified that  
20 to include separate findings as to the punitive damage  
21 liability based on the conduct submitted in each package's  
22 respective verdict director, and we would similarly propose for  
23 Verdict D separate punitive damage award findings for each of  
24 the conduct; otherwise, we would be unable to isolate the  
25 amount of the actual damage award in relation to the respective

1 punitive award for that conduct for constitutional due process  
2 concerns down the road. And so if the Court insists on  
3 continuing with dividing the continuous events from the time of  
4 nonresistance from the Tasing forward up and submitting  
5 separately the drop, then we have to submit separate damage  
6 findings, separate liability findings on the punitive issue for  
7 purposes of determining exactly what awards the jury made for  
8 which conduct.

9 THE COURT: All right. And I'm certain to give you  
10 an opportunity to speak to that, Mr. Cutler.

11 I think that obviously, as we're all aware, the  
12 underlying and controlling consideration is whether or not  
13 continued use of the Taser after the initial five seconds is  
14 clearly established or whether or not it remains debatable  
15 under the law, and you also filed a brief on that question.

16 MR. PRESLEY: We did. We found some authority last  
17 night, Your Honor, the Day versus Young case, and Matt has  
18 found an additional case early this morning, the Goodwin versus  
19 City of Painesville. Goodwin versus City of Painesville is the  
20 most factually identical case we can find as to the Tasing.  
21 The Sixth Circuit, I believe it is, dealt specifically with the  
22 prolonged nature of the Tasing. That was either -- it's a  
23 little unclear from the record it is a 21-second or a 26-second  
24 Tasing, but they specifically addressed the prolonged nature  
25 of a chest shot and the consequences to the plaintiff.

1           The only distinguishing factor in Goodwin versus  
2 City of Painesville is that it was a home search. It was a  
3 home entry as opposed to a vehicle. And they do rely on the  
4 Eldridge case in there, which was a diabetic who was  
5 continually asked to get out of his car. He was suspected of  
6 being drunk. He was parked in a condominium complex, and they  
7 kept ordering him out of his vehicle. He kept saying, I'm  
8 fine, I'm fine. He wouldn't comply. And so based on the  
9 combination of Eldridge and the Goodwin case, that's the most  
10 factually identical circumstance in the way of authority we can  
11 find for Your Honor.

12           THE COURT: All right. And is it significant this  
13 case was decided after the incident at hand as was the one in  
14 your brief?

15           MR. PRESLEY: This was a 2014 decision, Your Honor,  
16 but the conduct was --

17           THE COURT: It was decided and filed March 19th,  
18 2015.

19           MR. PRESLEY: The conduct was actually --

20           THE COURT: I guess your argument is this case holds  
21 at the time of the conduct it was a clearly established --

22           MR. PRESLEY: It was July 2010 was the Tasing  
23 event, and that would be consistent with our evidence regarding  
24 Tasers and strengthening of its warning regarding prolonged  
25 exposures and cardiac arrest in 2009.



1           THE COURT: I haven't read the case yet. I  
2 certainly will.

3           MR. PRESLEY: I apologize for not locating that  
4 sooner.

5           THE COURT: It appears that the victim in this case  
6 did not resist.

7           MR. PRESLEY: He retreated into his home, denied the  
8 officers entry. He was not resisting during the prolonged  
9 portion of the Tasing.

10          THE COURT: All right. I'll have a look at it.

11          MR. PRESLEY: Thank you, Judge.

12          THE COURT: I will say, though, that I continue,  
13 even after I've read your brief and then looked at those cases,  
14 to have some real reservation and concern over whether the  
15 prolonged use of the Taser beyond five seconds was clearly  
16 established as a constitutional right. Certainly there is  
17 evidence that it was in violation of the department policy, but  
18 that does not equate to a constitutional right.

19               I also have some consideration of the evidence as to  
20 when the damage by use of the Taser occurred. To my  
21 recollection Dr. Dennis testified that the cardiac arrest was  
22 effected when the Taser was deployed, and Dr. Arkin, also my  
23 recollection, he testified that loss of oxygen to the brain was  
24 evidenced in the video at the time that Mr. Masters collapsed  
25 and fell to the ground.

1           MR. PRESLEY: I think the key portion of Dr. Dennis  
2 is that what he saw in the pig studies and what he opined in  
3 this case was that Mr. Masters after the 20-second discharge  
4 began a dyssynchronous rhythm, and that is the ventricular  
5 tachycardia or that awkward rhythm that prevented perfusion  
6 because the heart is beating so irregularly and so quickly and  
7 so many beats per minute that it can't fill, and that's totally  
8 consistent with Dr. Arkin's finding that he's now experiencing  
9 an hypoxic event, because Dr. Dennis said at the conclusion of  
10 the Tasing he's now in that -- and, again, the video of the  
11 pigs showed that it occurs immediately after the introduction  
12 of the shock; and so while he did not go into full ventricular  
13 fibrillation and arrest until some two minutes later, it was  
14 that prolonged dyssynchronous rhythm and his inability to  
15 return to a normal sinus rhythm that was compromised by a  
16 combination of the extended duration of the Tasing of an  
17 additional 15 seconds and his positioning face first on the  
18 ground which prevented him from assuming the normal breathing  
19 pattern and being in a recovery position that would have  
20 assisted his ability to return to normal rhythm instead of  
21 progressing into V-fib.

22           THE COURT: Okay. Mr. Cutler, do you have anything  
23 that you want to offer on any of the instructions at this time?  
24 I'm going to take all of this. I'm going to look at it. I'm  
25 going to consider it as we go forward, and we will have a final

1 instruction conference after I determine the final package of  
2 instructions that I intend to submit and provide them to  
3 counsel.

4 MR. CUTLER: Yes, I do, Your Honor. Good morning.  
5 Thank you.

6 Let's kind of start with the instructions that Mr.  
7 Presley provided. His Instruction No. 13 changes the very  
8 first line from "Instructions 14 through 16" to "14 and 16."

9 THE COURT: He takes out 15.

10 MR. CUTLER: I'm sorry?

11 THE COURT: He takes out 15.

12 MR. CUTLER: Correct. We disagree with that  
13 obviously. So we would disagree with taking out 15 and the  
14 changing of the instruction to "14 and 16." We think it should  
15 be left as is.

16 THE COURT: I take it, Mr. Presley, you're not  
17 claiming a violation from the initial Tase, the initial  
18 five-second --

19 MR. PRESLEY: We're choosing not to submit that,  
20 Your Honor.

21 MR. CUTLER: With respect to his Instruction No. 14,  
22 we believe that the wording of Instruction No. 14 used  
23 yesterday is appropriate. So we don't agree with the change  
24 that Mr. Presley has made with respect to proposed Instruction  
25 No. 14.

1           As relates to No. 16, the concern I have with  
2   Instruction 16 is not due to any revision by Mr. Presley. It's  
3   a concern we had with the original proposed version of  
4   Instruction No. 16. The elements of damages that the jury is  
5   requested to consider are the physical pain and suffering the  
6   plaintiff has experienced and is reasonably certain to  
7   experience in the future. I don't believe there's been any  
8   evidence that Mr. Masters will continue to suffer any physical  
9   pain from the Tasing event. He suffered brain injury.  
10   That's obviously for the jury to decide. In terms of physical  
11   pain and suffering, I don't think there's been any evidence  
12   that he will continue to have that in the future.

13           So I think that instruction, subparagraph 1 of  
14   Instruction No. 16 should read, "The physical pain and  
15   suffering the plaintiff has experienced, comma, the nature and  
16   extent of the injury, comma, whether the injury is temporary or  
17   permanent, comma, and whether any resulting disability is  
18   partial or total." And actually that last part there's been  
19   no evidence -- well -- so just the "certain to experience in  
20   the future" should be omitted from proposed Instruction No. 16.

21           Regarding Mr. Presley's proposed Instruction No. 20,  
22   his request to change the first line of the second paragraph to  
23   "If you find in favor of plaintiff under Instruction 14 and/or  
24   Instruction 18," we don't have any objection to that.

25           And then with respect to his proposal for Verdict C

1 that would separate the damages for the conduct for the Taser  
2 from the conduct from the drop --

3 MR. PRESLEY: Liability.

4 MR. CUTLER: Liability, yeah, we don't have any  
5 objection to that, Your Honor.

6 THE COURT: All right. Thank you very much and we  
7 will revisit the --

8 MR. CUTLER: That was with respect to Mr. Presley's  
9 proposed changes. I do have some other concerns to  
10 instructions that he did not propose any changes.

11 THE COURT: All right.

12 MR. PRESLEY: And by additional record, Your Honor,  
13 I think we had submitted 4.70 -- well, let's see. Let me make  
14 sure that's correct. If you don't mind, Keith, I can address  
15 those damages.

16 THE COURT: Sure. Then we'll move on to your other  
17 concerns.

18 MR. CUTLER: Sure.

19 MR. PRESLEY: So the closest damages instruction  
20 since 4.72 for civil rights is for punitives, the closest  
21 damages instruction would be 4.70, and in the Eighth Circuit  
22 model instructions it should be modified to include the  
23 physical pain and mental and emotional suffering plaintiff has  
24 experienced and is reasonably certain to experience in the  
25 future, and that's 4.70.

1           THE COURT: All right. Anything further on that,  
2 Mr. Presley?

3           MR. PRESLEY: No. I think that's the most  
4 applicable guidance we have from the model instructions, Your  
5 Honor.

6           THE COURT: All right. That point makes sense if we  
7 instruct on that.

8           MR. CUTLER: I'm sorry?

9           THE COURT: I said that point makes sense if we  
10 instruct on that ultimately.

11          MR. CUTLER: Okay. My concern is not the pain or  
12 mental suffering that he has experienced in the past. That's  
13 not my concern. My concern is there is no evidence he will  
14 experience in the future.

15          THE COURT: I understand that. I think that's  
16 probably a question of what can be argued and what cannot.

17          MR. CUTLER: Well, not only what can be argued but  
18 if it's in the instruction, I mean, if there's no evidence of  
19 it, you can't or you shouldn't put it in the instruction. No  
20 doctor said he's going to experience physical pain from the  
21 Tasing in the future. Mental, brain injury, sure, but  
22 physical pain there is no evidence of that. There is no  
23 testimony about that.

24          THE COURT: Okay. Well, I'll go back and look at  
25 the model with all those arguments in mind.

1 MR. PRESLEY: I think the evidence specifically in  
2 that regard is in the record continuously that Bryce continues  
3 to experience this posturing. His mom addressed that. In  
4 addition to his clumsiness. That's also substantiated and all  
5 a function of a brainstem insult.

6 MR. CUTLER: The other concern I had was with  
7 Instructions No. 14 and 15. Starting with 15, I think the  
8 Court has correctly included affirmative defense instruction.  
9 That instruction reads, "If you find that plaintiff Bryce  
10 Masters was actively resisting arrest at the time of the Taser  
11 discharge, your verdict must be in favor of Timothy Runnels."  
12 Since that is an affirmative defense to Instruction 14, there  
13 needs to be a complete affirmative defense tail right after  
14 paragraph third. So it would read, paragraph third, "As a  
15 direct result, the plaintiff was injured unless you believe  
16 plaintiff is not entitled to recover by reason of Instruction  
17 No. 15."

18 THE COURT: I believe you're correct. If this is  
19 all submitted, that tail should be included.

20 MR. CUTLER: And then the next to the last  
21 paragraph, I think there's some brackets that probably need to  
22 be removed in the last line of the next to the last paragraph.

23 THE COURT: I agree. So I'm removing the bracket,  
24 "Without regard to officer's own state of mind, intention, or  
25 motivation," the bracketed portion.

1 MR. CUTLER: Yes. And there were a couple of other  
2 things on page 9 of the packet that was provided to us last  
3 night. It appears that the instruction numbers jump from 5 to  
4 8. Page 7 shows Instruction No. 5, three pages long, then it  
5 jumps to Instruction No. 8.

6 THE COURT: That's Rhys' fault. That's not my  
7 fault.

8 MR. CUTLER: I'm not assigning fault, Your Honor.

9 MR. PRESLEY: I know that's a moving target, so I  
10 haven't really addressed the numbering because depending on  
11 whether we play a video or not, we may not need that and it  
12 will change the numbering. The numbering is the last thing to  
13 go, as you always know, Judge.

14 THE COURT: We'll get that straightened out. Thank  
15 you, Mr. Cutler.

16 MR. CUTLER: No problem. Then Instruction No. 9  
17 there are some brackets that probably need to be removed.

18 THE COURT: I think we can remove that whole  
19 bracketed portion there in the second paragraph.

20 MR. CUTLER: Then, lastly, Your Honor, I didn't see  
21 this in the packet that was given to us yesterday evening.  
22 Yesterday morning we were given a packet of instructions that  
23 the Court was considering regarding punitive damages. It  
24 starts with, You decided in the first portion of this trial to  
25 award, and in the second portion of the trial, that



1 instruction. The instruction that follows that starts off  
2 with, When deliberating. I'm referring to that because they're  
3 not numbered. It starts out with, "When deliberating, you  
4 should consider the following in deciding the amount of  
5 punitive damages to award." Like I said, I didn't see that in  
6 the packet yesterday evening, but it was provided to us  
7 yesterday morning in a three-page separate set.

8 THE COURT: All right. I'll have a look at that.

9 MR. PRESLEY: I didn't address the punitives, Your  
10 Honor, because I figured we'd take that up -- other than the  
11 consistency with the separate finding.

12 THE COURT: Okay.

13 MR. CUTLER: So my concern with it was there is a  
14 bracketed paragraph -- it tells the jury what they should  
15 consider in determining an amount of punitive damages. There  
16 are four paragraphs; how reprehensible the defendant's conduct  
17 was, how much harm was caused, the amount considering the  
18 financial condition. That fourth paragraph says, "The amount  
19 of fines and civil penalties applicable to similar conduct." I  
20 don't think that's appropriate. I think that should be  
21 omitted.

22 THE COURT: Your objection's noted.

23 MR. CUTLER: For the Court's reference the model  
24 numbers that are cited on that are 4.24 and 4.72.

25 THE COURT: Thank you.

1 All right. We will revisit the instructions at a  
2 later point in time, and I'll be back -- are the jurors all  
3 here, Lisa?

4 THE COURTROOM DEPUTY: Yes.

5 THE COURT: I'll be back at nine o'clock.

6 (Recess taken at 8:50 a.m.)

7 (The following proceedings were had in the courtroom  
8 out of the presence of the jury:)

9 THE COURT: Thank you. You can all be seated.

10 Ready, Mr. Cutler?

11 MR. CUTLER: Yes, sir.

12 THE COURT: Thank you.

13 Mr. Presley?

14 MR. PRESLEY: Also, Your Honor.

15 THE COURT: All right. Lisa, would you bring the  
16 jury in.

17 THE COURTROOM DEPUTY: Yes.

18 (The following proceedings were had in the presence  
19 of the jury:)

20 THE COURT: Thank you. Everyone can be seated.

21 Good morning, ladies and gentlemen.

22 I apologize for the delay. I had some things I had  
23 to take up, and I appreciate your all being here and being  
24 patient with us.

25 Mr. Cutler, are you ready to proceed this morning?

1 MR. CUTLER: Yes, sir.

2 THE COURT: All right. Good morning. Come right up  
3 to the witness stand for us, please, and before you're seated  
4 my clerk will swear you in. Thank you.

5 GARY MICHAEL VILKE, being sworn by the courtroom deputy,  
6 testified:

7 DIRECT EXAMINATION BY MR. CUTLER:

8 Q Good morning.

9 A Good morning.

10 Q Would you state your name, please.

11 A My name is Gary Michael Vilke.

12 Q What is your occupation?

13 A I'm an emergency physician.

14 Q And where are you an emergency physician?

15 A I work at the University of California in San Diego.

16 Q Generally speaking and fairly briefly, what does it  
17 entail to be an emergency physician?

18 A Sure. The physician works in the emergency department,  
19 and we basically take all-comers that come in, everything from  
20 heart attacks and strokes to trauma, gunshot wounds to colds  
21 and seizures. We see a little bit of everything in the  
22 emergency room.

23 Q How long have you been an emergency physician?

24 A For over 25 years now.

25 Q Do you have any other occupation or profession?

1       A           That's my main occupation. I have a lot of roles  
2 associated with that.

3       Q           Such as?

4       A           I served as the chief of staff of our hospital. It's  
5 an administrative position. I also worked with peer review and  
6 quality improvements and processes with our hospital. I've  
7 worked with the EMS system in San Diego County, so I was the  
8 medical director for the system of about 100,000 EMTs -- I'm  
9 sorry -- about 4,000 EMTs and about 1,000 paramedics with  
10 100,000 calls a year. I've worked with air medical. I've  
11 worked with air ambulances, helicopters, the SWAT teams, a  
12 number of different groups that I've worked with in my role as  
13 an emergency physician.

14      Q           What about on the academic side? Do you do anything on  
15 the academic side?

16      A           I do, yes. I'm full professor with the University of  
17 California-San Diego. I teach medical students. I teach  
18 residents. I teach fellows. I do research. I've published  
19 about 70-plus book chapters and two textbooks and about 250  
20 peer-reviewed publications in journals.

21      Q           Where did you go to medical school?

22      A           I went to the University of California-San Diego School  
23 of Medicine.

24      Q           And when did you graduate?

25      A           1992.

1 Q And after you graduated from medical school, what did  
2 you do?

3 A I did a year of surgery, surgical internship. So I  
4 worked in the hospital as an intern for the 120 hours a week  
5 learning my trade for one year. Then I went on to the  
6 emergency medicine residency. That's a three-year program to  
7 learn emergency medicine.

8 Q Now, you mentioned that you are a full professor. Do  
9 you also do lectures or seminars, things like that?

10 A I do, yes.

11 Q Primarily in what areas?

12 A It varies. The basis is always emergency medicine.  
13 I've been asked to lecture locally and even internationally on  
14 topics of in-custody death issues, Taser issues. But also do a  
15 lot of emergency medicine training as well. So everything from  
16 trauma to cardiac arrest. I do a lot of areas in that venue.

17 Q You mentioned you've written about 70 book chapters.  
18 Have you written any articles?

19 A I have, yes.

20 Q Do you have any idea how many?

21 A A little over 250 peer-reviewed articles.

22 Q What kind of articles?

23 A Peer-reviewed.

24 Q Okay. And basically what is peer reviewed?

25 A Peer review basically is you write a paper. You send

1 it to a journal in hopes it will get published. They send it  
2 out to sort of peers or experts in that area to review it,  
3 offer feedback, send it back to the editor. They take that  
4 information and decide if they want to accept it, have you  
5 revise it, or reject it. If they go through that process and  
6 it's accepted, that's considered a peer-reviewed article.

7 Q Let me show you what has been marked as Defendant's  
8 Exhibit 36. Would you identify that, please?

9 A That's my curriculum vitae, basically my resume.

10 Q And this is kind of thick.

11 A It is, yes.

12 Q So I'm not going to read from it, but generally what  
13 does this include?

14 A This includes my academic background, awards that I've  
15 received, positions that I've held, committees that I've  
16 chaired and then it consists of a list of my publications and  
17 my grant funding, my abstracts, and some of my presentations.

18 MR. CUTLER: Your Honor, we move for admission of  
19 Defendant's 36.

20 MR. BURTON: No objection, Your Honor.

21 THE COURT: Thank you.

22 Received.

23 Q (By Mr. Cutler) Now, you mentioned you have written  
24 some articles and you've given lectures on Tasers and police  
25 in-custody deaths. How did you get interested in that?

1       A       I got interested as a chief resident during my  
2 residency. There was a study being put on, which was started  
3 by one of my mentors, looking at the concept of -- this was  
4 back in the early '90s -- that they thought if you put somebody  
5 in restraints, you handcuffed them, you pull their feet up and  
6 restrain them to their feet and left them on their stomach,  
7 that that would cause asphyxiation, cause people to die. So  
8 there was a grant funded to us to try to study to see if that  
9 was a real possibility, because logically it doesn't make sense  
10 if I laid you on your stomach and I put your hands behind your  
11 back and I pull your feet up a little bit that all of a sudden  
12 you're going to die. So that's how I got started was a project  
13 that I was working with one of my mentors, and basically it  
14 debunked the idea that there's any true issues being in that  
15 position.

16       Q       So how did you get from that to studying the effects of  
17 Tasers?

18       A       Then it sort of just evolved. After we looked at that,  
19 we determined that position was safe physiologically, the  
20 question came up that sometimes when people are being arrested,  
21 there's some weight being pushed on them to hold them down or  
22 while they're putting handcuffs on. So we looked at research  
23 looking at 25, 50 pounds of weight on their back to see if that  
24 has any significant physiological differences. It really  
25 didn't. Then we moved it up 225 pounds of weight, and, again,

1 it didn't have any significant clinically important findings.

2 And then pepper spray was being used in cases, and  
3 so we got grant funding to look at the effects of pepper spray  
4 on ventilation to see if that impacts them.

5 Then over time that's when Tasers started coming  
6 into the market, and there were deaths that had involved  
7 Tasers, and the question was, it's put out as a weapon but the  
8 reality is nobody had looked at a lot of human physiology on  
9 it, so we got grant funding to look at the effects of the Taser  
10 on human physiology.

11 Q Including the heart?

12 A Including the heart, yes.

13 Q So how long have you been researching and writing about  
14 the effects of Tasers?

15 A Tasers it's probably been about ten years or so that  
16 I've been involved with research in that area, maybe longer.

17 Q Now, you've been retained in this case to provide  
18 certain opinions, correct?

19 A Yes.

20 Q And you reviewed a lot of materials in order to form  
21 your opinions?

22 A I did, yes.

23 Q What materials did you review?

24 A In case specific materials. I looked at the video. I  
25 looked at the police reports. I looked at the medical reports



1 that were available. I looked at the depositions and  
2 transcripts and files that were brought out, investigations.  
3 That's the sort of material from the specifics of the case.  
4 Then obviously there's literature surrounding use of Tasers,  
5 which I'm familiar in general based on my research, but we  
6 looked at some of that as well.

7 Q Now, you mentioned you looked at some of the  
8 depositions. Did you review the deposition of Dr. Andrew  
9 Dennis?

10 A I did, yes.

11 Q And did you review the written report that he has  
12 prepared in this case?

13 A I did, yes.

14 Q And did you review the studies that he relied on to  
15 form his opinions?

16 A I did, yes.

17 Q As a result of your review of the materials that we  
18 just discussed, have you formed any opinions in this case  
19 relative to Dr. Dennis' opinions?

20 A Yes.

21 Q With respect to Dr. Dennis' opinions -- let me ask you  
22 this: What was Dr. Dennis' opinion about the effect of the  
23 Taser on Bryce Masters in this case?

24 A As I understand his opinion, it was that the Taser  
25 activation performed some cardiac capture during the event that

1 led to what's thought to be probably a fast rhythm or maybe a  
2 slow rhythm, I think he didn't really qualify that, but a  
3 change in rhythm afterwards that about two minutes later  
4 deteriorated to ventricular fibrillation.

5 Q So have you formed any opinions about the validity of  
6 Dr. Dennis' opinion about what happened in this case?

7 A I have, yes.

8 Q What is your opinion in that regard?

9 A Based on the available data and research, the idea that  
10 an electrical impulse like a Taser would cause a ventricular  
11 fibrillation event two minutes later isn't really well  
12 supported in the medical literature.

13 Q All right. So can you explain that?

14 A Sure. The idea of cardiac capture I think has been  
15 discussed. You know that it can happen in pigs. There's  
16 modeling in there if you put the darts close to the heart, you  
17 can capture that heart, and then typically when they stop it,  
18 stop the electricity, the heart goes back to its normal rhythm.  
19 There are a few cases in which the pig went immediately to  
20 ventricular fibrillation.

21 Just to put perspective, there's been about probably  
22 7,000 activations on pigs, plus or minus, of which they found  
23 cardiac capture in about 740, or so, 750, so about 10 percent.  
24 Of those 750 pigs that had cardiac capture six of them went  
25 into ventricular fibrillation. So that irregular beat that

1 you've heard about already. Of those six, five of them went  
2 immediately into ventricular fibrillation. The electricity  
3 stimulated the heart or electrocution or something along those  
4 lines and immediately went into ventricular fibrillation. One  
5 pig had what's called V-tach, a fast rhythm, then a few minutes  
6 later, three minutes later, degenerated into ventricular  
7 fibrillation. So that's the data that's being proposed to say  
8 that because it happened in this one pig out of 7,000  
9 activations, 700 captures, that that's more likely than not  
10 what happened to Bryce Masters. The human data doesn't support  
11 it anymore. There's really no data that shows the human heart  
12 can be captured by an X26.

13 Q Now, you talked about pig studies. We've heard about  
14 pig studies. What's up with the pigs? Why are we -- why pigs?

15 A Well, pigs are easier to study from the perspective of  
16 giving prolonged Taser activations, repeated Taser activations  
17 just from the perspective of getting it through a human  
18 subjects committee. We did a human subject study and it's  
19 difficult to get that through because they want to make sure  
20 things are safe for the humans, and so we want to make sure  
21 things are okay for pigs but the reality is it's easier to  
22 study those animals.

23 Q Now, aside from them not being human and it's easier to  
24 study them, why else is it easier to study pigs?

25 A Well, it's easier to study pigs because you can control

1     them.  You can control their -- if you put them on ventilators  
2     and they're anesthetized, you can do exactly the number of  
3     Taser activations you want, locate the probes exactly where you  
4     want them.  So it's a modeling they can sort of easily do,  
5     replicate.

6     Q           So can you translate what happens to a pig directly to  
7     what happens to humans?

8     A           That's the problem.  You really can't.

9     Q           You cannot?

10    A           No.

11    Q           Why not?

12    A           So pigs are different than humans obviously aside from  
13    the way they look.  Physiologically they have different issues  
14    that make taking what happens in a pig directly to a human.  
15    Pigs have been used for modeling for defibrillation for  
16    decades.  Cardiologists use them for pacemakers and  
17    defibrillators that they put into people to test them because  
18    pigs go into V-fib much easier than humans do, three times as  
19    easy into V-fib, so they're a great model to study in  
20    ventricular fibrillation.  But when you're looking for  
21    thresholds and causes of it, obviously an organ isn't like a  
22    pig that goes into it much more easily probably is not ideal.  
23    And the reason this happens is, No. 1, pigs are generally  
24    smaller.  Pigs in these studies were much smaller.

25    Q           How much smaller?

1       A       So there's never been a pig greater than 50 kilograms,  
2 about 110 pounds, that's ever gone into ventricular  
3 fibrillation from any of these Taser studies. Most of them  
4 converted -- in fact, the one pig that converted from  
5 electricity to that delayed V-fib was about 65 pounds. It's a  
6 very small, tiny pig. So the size of the pig matters, because  
7 obviously you're able to get the darts closer to the heart and  
8 that really is the effect of modeling and trying to get pacing,  
9 capture, or ventricular fibrillation.

10       Q       Okay. Any other differences with the pig heart versus  
11 the human heart and how it can be translated from pigs to  
12 humans?

13       A       Sure. So the pig has a different anatomy in the heart.  
14 Pigs' hearts -- and I'll try to explain this in terms of I'm an  
15 ER doc. I'll try to keep it so I can understand it. In humans  
16 we have these transmitting fibers called Purkinje fibers.

17       Q       Called what?

18       A       Purkinje fibers.

19       Q       Okay.

20       A       They're little nerves that transmit electricity. Think  
21 of it as little transmitters or conductors of electricity.  
22 That's what moves the conduction around our heart to make the  
23 heart -- with people with their EKG, electrical activity you're  
24 measuring, that's what's being transmitted through those  
25 Purkinje fibers.

1           In the human heart, you look and see a regular heart  
2 there, they're on the inside. They're on the very inner  
3 portion of the muscle layers. You have a thick muscle wall of  
4 the heart all the way around. It would be on the inner surface  
5 here. So if you're thinking about an electrical impulse coming  
6 from the outside of the body, like a Taser, it's got to go  
7 through your skin and your fat and your muscle and then maybe a  
8 little lung to get to that heart, and it's got to go through  
9 the heart muscle to get down to those Purkinje fibers so it can  
10 actually have some electrical activity affecting the heart.

11           Pigs are different. Their Purkinje fibers go all  
12 the way through all layers of the heart muscle. So in a pig  
13 their chest walls are thinner in general. Their  
14 dart-to-the-heart portion is closer and they're actually  
15 hitting the Purkinje fibers right on the surface. So the  
16 electrical activity is more easily transmitted through the  
17 heart tissue, which is why pigs tend to go into ventricular  
18 fibrillation more easily than humans do. So when you see a  
19 study that says a pig went into ventricular fibrillation, that  
20 means a pig went into ventricular fibrillation. It's a  
21 different heart of different size of different space, and it's  
22 not the same as putting the probes in the same position on a  
23 human being.

24       Q           The theory that Dr. Dennis has espoused about what  
25 happened here, has that ever been demonstrated in a human?

1       A       The idea of a delayed ventricular fibrillation has not  
2 been displayed where you see capture followed by proposed  
3 rhythm changes to ventricular fibrillation. It hasn't been  
4 demonstrated in any research that's been done on humans.

5       Q       And there have been instances where humans have been  
6 Tased obviously, correct?

7       A       Yeah. About 3 million field uses and 2 and a half  
8 million uses in studies and in training sessions, so yes.

9       Q       And the modeling that Dr. Dennis is proposing, it just  
10 is not documented anywhere? I mean --

11      A       I mean he's basing it mainly on this one pig out of the  
12 7,000 activations. In the humans there hasn't been studies  
13 that demonstrated cardiac pacing in the X26 that subsequently  
14 went into V-fib. Two and a half million volunteers and many of  
15 them had transcardiac placement, including myself, and none of  
16 them ever had cardiac pacing demonstrated, and certainly none  
17 of them demonstrated that that went into ventricular  
18 fibrillation two minutes later.

19      Q       Now, you talked about the two minutes. How important  
20 is that two minutes or what is the importance of that two  
21 minutes?

22      A       So the idea if somebody is going to be electrocuted,  
23 whether it's an outlet, whether it's a lightening strike or  
24 whether it's a car battery or a Taser, if somebody is going to  
25 go into ventricular fibrillation from an electrical activity,

1 it happens at the time the electricity is being placed. That's  
2 the modeling behind it. That's the five out of six pigs that  
3 actually went into V-fib after Taser activation in these  
4 studies all went into as soon as the -- well, while the Taser  
5 was being used, turn off the energy and they went into  
6 ventricular fibrillation. That's what you would expect to see  
7 in somebody who was, I guess if you want to call it,  
8 electrocuted or shocked into a dysrhythmia, it should happen at  
9 that time.

10 So that's why the two minutes after this event he's  
11 moving and moaning and getting out of the car, those types of  
12 things, and I think everybody established he wasn't in cardiac  
13 arrest at that time. He wasn't in ventricular fibrillation.  
14 So what happened later was not an electrical activity to that  
15 heart that caused the conversion to V-fib like we would expect  
16 it to be.

17 Q So as we see from the video, Bryce is Tased and at some  
18 point the Taser discharge stops?

19 A Correct.

20 Q And then it's two minutes?

21 A Correct.

22 Q It's been about 45 seconds since I asked you my last  
23 question. That's not even half of the two minutes you're  
24 talking about, is it?

25 A That's correct.



1 Q And so once the Taser discharge, you just don't have  
2 that length of time before you all of a sudden go into V-fib?

3 A If you're going to model the Taser activation causing  
4 V-fib, and there's modeling out there that says it can happen  
5 in one in 2.8 million people in Taser activations, the modeling  
6 is that at the time of the event you go into ventricular  
7 fibrillation. You immediately go unconscious because that's  
8 what happened; and if you check the rhythm, it's V-fib. He  
9 didn't immediately go unconscious. He was responsive  
10 minimally, but he was not in cardiac arrest.

11 When you are in V-fib, you are in cardiac arrest.  
12 You've heard of the bag of worms. The heart doesn't push blood  
13 around and people immediately lose consciousness within one or  
14 two seconds of going into V-fib. We know he wasn't in that.  
15 That's been established. So that activation causing the  
16 current going into V-fib couldn't have happened because of that  
17 time period.

18 Q And this two-minute-one-second time period that we're  
19 talking about, that's not necessarily coming from you. That's  
20 Dr. Dennis' observation that he was not in cardiac arrest until  
21 two minutes and one second after the Taser discharge ended?

22 A That's what I understand Dr. Dennis reported. It's  
23 what it looked like myself when I look at the video as well.

24 Q Now, Dr. Dennis talked about a person with a pacemaker.  
25 How does a pacemaker relate to cardiac capture and how does it

1 relate to Taser applications and what we're talking about?

2 A Sure. There was one case report, sort of a publication  
3 that talked about a subject or a person who had a pacemaker in  
4 place and got a Taser activation and then they recorded what  
5 they thought to be cardiac capture when they looked at the  
6 download of that pacemaker.

7 So the pacemaker, if you're not familiar with it, is  
8 a device that has two wires that go right into your heart. The  
9 idea is to pace your heart if you need it or to defibrillate  
10 your heart if you go into a ventricular fibrillation. If you  
11 know anybody that has one of those devices, that's their device  
12 that they're set up to protect you or pace you.

13 So when you use a Taser activation, electricity  
14 likes to go through the points of least resistance. Sort of  
15 makes sense why you don't step in water when there's  
16 electricity there because it transmits very well through that,  
17 but it doesn't go well through air. But it does go well  
18 through metal, which is why your houses are wired for  
19 electricity with wires.

20 So if you do a Taser activation on somebody on the  
21 chest or in the body and the electricity is sort of going  
22 through the muscle layers, which is where it likes to go  
23 through these superficial muscles because it's a point -- it's  
24 sort of a freeway for them. They like to conduct through that  
25 wet environment. It picks up these wires. So what happens

1 when it sees these wires that are made of metal? It likes to  
2 conduct down those wires. So it's an easy transmission of  
3 electricity from the pacemaker right into the heart. So you  
4 would expect that somebody who had a pacemaker in and got a  
5 Taser activation, that some of that electricity would go down  
6 the wire freeway to the heart and potentially cause a cardiac  
7 capture. That's what we do in the ER with pacemakers. We put  
8 wires in to pace people's hearts, so it did exactly what you  
9 would expect it to do. So there was a case in which there was  
10 a cardiac capture in a human but it was somebody who had a  
11 pacemaker in place.

12 Q So you testified that you can't really translate pigs  
13 to humans because there are just differences?

14 A Correct.

15 Q Can you translate a person with a pacemaker to someone  
16 without a pacemaker? Can you make that connection that it  
17 happened with a pacemaker so, therefore, it would happen  
18 without a pacemaker?

19 A Because the pacemaker physiology causing the changes in  
20 electricity you wouldn't be able to translate that to somebody  
21 without a pacemaker. It's sort of an artificial environment.  
22 You have wiring to go to your heart where somebody without a  
23 pacemaker doesn't. So even a single case report out of 5  
24 million applications of the Taser wouldn't be overwhelming  
25 evidence for it anyway, but the idea that the physiology is

1 different also supports that.

2 Q Dr. Vilke, the opinions you've given, have they been  
3 given to a reasonable degree of medical certainty?

4 A Yes.

5 Q And they've been based on your experience, your  
6 research?

7 A Yes.

8 Q And the available literature in the medical community?

9 A Yes.

10 Q And the scientific community?

11 A Yes.

12 MR. CUTLER: No further questions, Your Honor.

13 CROSS-EXAMINATION BY MR. BURTON:

14 Q Dr. Vilke, you have not offered any opinion on what  
15 caused Bryce Masters to go into cardiac arrest at about 3:15  
16 p.m. on September 14th, 2014, in Independence, Missouri; is  
17 that correct?

18 A That's correct.

19 MR. BURTON: No further questions.

20 MR. CUTLER: No further questions.

21 THE COURT: Thank you, Doctor. You're excused.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 TIMOTHY RUNNELS, being sworn by the courtroom deputy,  
25 testified:

1 DIRECT EXAMINATION BY MR. CUTLER:

2 Q Good morning.

3 A Good morning.

4 Q Would you state your name, please.

5 A Timothy Runnels.

6 Q We've been hearing a lot about you over the last couple  
7 days, right?

8 A Correct.

9 Q You were employed by the Independence Police Department  
10 as a police officer, correct?

11 A Yes, sir.

12 Q How long were you employed by Independence?

13 A Just under three years.

14 Q And you were employed as a police officer?

15 A Yes.

16 Q Did you grow up in Independence?

17 A Yes.

18 Q And high school, college?

19 A Yes. I did all my education in Independence.

20 Q Where did you go to college?

21 A I did a community college for the first two years, then  
22 I graduated from CMSU my last two years.

23 Q And what was your degree in?

24 A Criminal justice.

25 Q And after you graduated with your degree in criminal

1 justice, what did you do next?

2 A I began applying for police academy, police officer  
3 positions.

4 Q Were you accepted into the academy?

5 A Yes, sir.

6 Q Did you go through the academy?

7 A I did. I went to the academy with the Kansas City  
8 Police Department.

9 Q And you graduated?

10 A Yes.

11 Q And you worked for the Kansas City Police Department,  
12 correct?

13 A Yes.

14 Q How long did you work there?

15 A Just under four years, I think.

16 Q And from Kansas City you went where?

17 A I went to Raymore for about six months.

18 Q And then after Raymore?

19 A I went to Independence when they called and offered a  
20 position to me.

21 Q There's been some testimony about the training you  
22 received with respect to Tasers. Do you remember the training  
23 you received?

24 A Briefly.

25 Q What do you remember about it?

1       A       I remember that Tasers were encouraged to be used and  
2 that they were a less lethal and safe tool to use.

3       Q       And what about how to use them, where to fire them,  
4 when to fire them?

5       A       Initially it was we could fire any point in the body.  
6 I remember some training later where they had recommended a  
7 preferred area change for lower midsection for Taser  
8 applications.

9       Q       When you say "preferred area change," what do you mean?

10      A       They just recommended a preferred area for the Taser  
11 deployment.

12      Q       And what was that preferred area?

13      A       I believe anywhere on the body except for the immediate  
14 heart area.

15      Q       Do you remember when you underwent Taser training?

16      A       My initial one was in the academy. I believe it was  
17 around 2007.

18      Q       And did you undergo any training while at KCPD?

19      A       I believe I had in-service training, but I'm not sure  
20 when it was.

21      Q       Did you undergo Taser training at Independence Police  
22 Department?

23      A       I had a recert training. I believe that was in May.

24      Q       When you say "recert," you mean recertification?

25      A       Correct.

1 Q In May of what year?

2 A 2013, I think.

3 Q So you don't deny that you had some Taser training,  
4 correct?

5 A No, sir.

6 Q Now, let's fast forward to September 14th of 2014.

7 What was your first interaction with either Bryce Masters or  
8 the vehicle he was driving?

9 A In September what was my first interaction?

10 Q September 14th of 2014.

11 A I was on a side street. I believe it was Savage. I  
12 observed a vehicle going westbound on 23rd Street at a slightly  
13 higher rate of speed with darkly tinted windows.

14 Q What did you do next?

15 A I pulled out into the flow of traffic. Upon getting  
16 close to the vehicle, the vehicle pulled into the QT parking  
17 lot.

18 Q QT meaning QuikTrip?

19 A Yes, sir.

20 Q What did you observe the vehicle do in the QuikTrip  
21 parking lot?

22 A The vehicle parked at one of the pumps at which time  
23 when I passed the vehicle, I was able to obtain the license  
24 plate. I parked on the west side of the parking lot. I  
25 conducted a license plate check where it came back with a



1 warrant in association with the vehicle, and I just sat to  
2 observe the vehicle, and it did not appear to be getting any  
3 fuel or anything, at which time shortly exited the pumps,  
4 circled the adjoining McDonald's parking lot twice without  
5 getting fuel.

6 Q Fuel?

7 A I'm sorry. Without getting food. And then pulled out  
8 into, I believe it was Fair, at which time I pulled behind the  
9 vehicle.

10 Q And why did you pull behind the vehicle?

11 A Due to the warrant on the plate, the darkly tinted  
12 windows, and the suspicious driving activities, as far as not  
13 getting fuel and not getting food, I decided to conduct a  
14 vehicle check.

15 Q So the vehicle pulled out on to Fair Street, you pulled  
16 out behind it, and what happened?

17 A I engaged my emergency lights and sirens once we  
18 proceeded past the intersection of Fair and Noland.

19 Q And the vehicle pulled over?

20 A Yes.

21 Q And you pulled over behind it?

22 A Yes.

23 Q We saw from the video there's kind of a period of time  
24 between the time your vehicle and the other vehicle stopped and  
25 we see you walking to the vehicle, maybe 45, 60 seconds, I'm

1 not sure. Do you remember what is going on during that time  
2 frame before we see you walk to the vehicle?

3 A Prior to walking to the vehicle?

4 Q Yes, sir.

5 A I believe there was air traffic going on at the time,  
6 so I was waiting to run the vehicle information and location  
7 through dispatch; and once I was able to run it, I was exiting  
8 the vehicle and able to approach the Bryce Masters vehicle.

9 Q And you went around to the passenger side?

10 A Correct.

11 Q What did you do?

12 A I knocked on the window and instructed him to roll it  
13 down.

14 Q Did he do that?

15 A No, sir. Well, he rolled it down an inch or two  
16 initially.

17 Q And what was your verbal response to that?

18 A I believe I told him to roll it down again. It went  
19 down another inch or two, at which time I could smell the odor  
20 of marijuana. I told him to roll it down again, and he did  
21 not, at which time that is when I went to the driver's side of  
22 the vehicle.

23 Q We've seen from the video you -- did he tell you that  
24 the driver's side window didn't work?

25 A I don't recall if he said that or not. I don't believe

1 so.

2 Q Okay. You asked him to step out of the vehicle?

3 A Yes.

4 Q And then tell us what happened from that point.

5 A At that point he was already not complying with my  
6 instructions and I was instructing him out of the vehicle. He  
7 began to turn and brace himself in the vehicle after I  
8 initially told him I was -- or warned him he was going to be  
9 Tased if he didn't get out. I attempted to physically remove  
10 him from the vehicle, at which time he spun in the vehicle,  
11 leaning back into the passenger side where he brought up his  
12 foot in either a kicking motion or bracing motion. At that  
13 time I decided I wasn't able to physically remove him, so I  
14 redrew the Taser and warned him again he was going to be Tased,  
15 at which time I ultimately ended up deploying the Taser.

16 Q So you took out the Taser the first time?

17 A Yes.

18 Q And what did you do when you took it out the first  
19 time?

20 A I warned him he was going to be Tased if he didn't get  
21 out of the vehicle.

22 Q And he didn't get out, did he?

23 A No, sir.

24 Q Why didn't you Tase him at that point instead of  
25 putting the Taser back in your holster?

1       A       At that point initially I thought I was able to pull  
2 him out, so I attempted to physically remove him before using  
3 the Taser; and after unsuccessfully being able to do that, I  
4 chose the option of the Taser again.

5       Q       Now, we talked about your Taser training. When you  
6 Tased Bryce Masters, did he respond physically in the way that  
7 your training indicated a Tased suspect should?

8       A       No, sir.

9       Q       How was it different?

10      A       Well, this is my first and only Taser deployment in the  
11 field, and the fact that he was able to get up and move on his  
12 own accord I did not know if the Taser was having an effect,  
13 was having a full effect, partial effect, or what was actually  
14 occurring. I just knew that he appeared to be initially  
15 complying, but I didn't know what would happen if the Taser  
16 deployment were to cease.

17      Q       What do you mean by that?

18      A       If the Taser did have an effect on him and that's what  
19 was causing him to comply, once the Taser is ceased, he would  
20 revert back to resisting arrest.

21      Q       All right. So we see from the video Bryce, then he  
22 gets out of the car and the Taser activation is still going,  
23 correct?

24      A       I believe so, yes.

25      Q       So at some point Bryce gets on the ground, correct?

1       A       Correct.

2       Q       So what are you doing at that point?

3       A       At that point I believe I instructed him to put his  
4 hands behind his back.

5       Q       This is while he's on the ground?

6       A       Correct.

7       Q       So you're standing up. The Taser discharge is  
8 continuing. And you instructed him to do what?

9       A       To place his hands behind his back.

10      Q       Did he do that?

11      A       No, sir.

12      Q       So what did you do at that point?

13      A       At that point I moved in to physically control him and  
14 place his hands behind his back. Once I was able to do so, the  
15 Taser was ceased.

16      Q       And then at some point on the video I think we heard  
17 you say the words into your radio "Taser deployment"?

18      A       Correct.

19      Q       What was that for?

20      A       Just to notify the dispatch and other officers in the  
21 area there was a Taser deployment and to notify AMR to respond  
22 due to our policy.

23      Q       AMR, that's the emergency medical response?

24      A       Correct.

25      Q       After you handcuffed Bryce, what happened next?

1       A       I believe I instructed him to move over to the side of  
2 the road, the curb side of the road.

3       Q       Did he do that on his own?

4       A       No, sir.

5       Q       So what did you do next?

6       A       At that point in time I picked him up, escorted him  
7 over to the side of the road. It appeared he was initially  
8 minimally offering assistance. When I got him over to the side  
9 of the vehicle, I was attempting to get him to the curb at  
10 which time that is when I dropped him.

11      Q       And just so we're clear, I'm not going to gloss over  
12 this, you dropped Bryce to the ground?

13      A       Yes, sir.

14      Q       His hands were handcuffed behind his back, correct?

15      A       Yes, sir.

16      Q       And you dropped him to the ground?

17      A       Yes, sir.

18      Q       Face first?

19      A       Yes, sir.

20      Q       Because you did that, you were charged in federal  
21 court, correct?

22      A       Correct.

23      Q       And you pled guilty to violating his civil rights with  
24 respect to dropping him to the ground, correct?

25      A       Yes, sir.

1 Q And you are currently serving a sentence for that in  
2 federal prison, correct?

3 A Correct.

4 Q And you're here today because permission was granted  
5 for you to attend the hearing but you are still in federal  
6 prison serving your sentence, correct?

7 A Correct.

8 Q How long was your sentence?

9 A Four years.

10 Q And not four years from the date this happened. Four  
11 years from the date that you pled guilty, correct?

12 A Correct. Four years from the sentencing date.

13 Q From the sentencing date. You pled guilty on one date  
14 and then there was a subsequent sentencing hearing, correct?

15 A Correct.

16 Q And then from that day forward that's when your  
17 sentence started?

18 A Yes.

19 Q And you're currently serving that federal sentence out  
20 of state?

21 A Yes.

22 Q You used the phrase "resisting arrest." Is there any  
23 doubt in your mind that Bryce Masters was resisting arrest?

24 A No, sir.

25 Q We've heard some talk about the 20-second Taser

1 discharge. As you were discharging the Taser, what was going  
2 through your mind?

3 A Well, I believe the Taser to do a five-second cycle.  
4 Also at the time of the deployment I didn't know if it was  
5 actually working or having the desired effect due to Bryce's  
6 continued movements. So I didn't know if it was working or  
7 what exactly what was going on. I just knew at that time I was  
8 getting some sort of temporary compliance.

9 Q At what point did you determine that the Taser  
10 discharge was 20 seconds?

11 A I believe it was a week or two later when the IA  
12 investigation was started.

13 Q You didn't know at the time?

14 A No, sir.

15 Q How did you not know at the time that it was 20  
16 seconds?

17 A I wasn't focused on the time. I didn't realize 20  
18 seconds had lapsed. I was focusing on getting Bryce Masters in  
19 handcuffs and under control at that time.

20 Q So you weren't counting seconds as you were trying to  
21 arrest him?

22 A No, sir. And the fact, I believe, the Taser was only  
23 five seconds, I wasn't -- it wasn't even a thought in my mind.

24 Q There was some discussion about -- I'm sorry -- there  
25 was testimony by Ms. Stacy Masters that you drove by the



1 Masters' house at some point after all of this happened. Do  
2 you recall that testimony?

3 A Yes, sir.

4 Q Did you drive by the Masters' house?

5 A I did on one occasion, yes.

6 Q Why did you drive by the Masters' house?

7 A Well, a few week, maybe a month prior I had thought I  
8 had observed Bryce leaving our neighborhood in a black vehicle  
9 but I wasn't sure, and then over the next few weeks I started  
10 receiving multiple reports from my neighbors that a male  
11 matching Bryce's description in a black car had been driving by  
12 my house.

13 Q You say a black car. The video that we saw showed a  
14 gray Pontiac?

15 A Correct. That was the vehicle in the stop.

16 Q But you said you saw a black car and it was reported to  
17 you that a black car --

18 A Correct. It was reported by my neighbors and the  
19 vehicle I thought I saw Bryce in was a black, I believe it was  
20 an Audi. Then when I spoke to my immediate neighbor, he said  
21 that an individual looking like Bryce drove by my house real  
22 slow; and then when he approached the vehicle, the individual  
23 yelled out the window, What are you looking at old man, and  
24 then drove off.

25 Q Then what did you do in response to that?

1       A       I didn't do anything initially. It was a few days to a  
2 week later, I believe it was myself and my family were leaving  
3 a restaurant in the 40 Highway area. We were driving eastbound  
4 on 40 Highway, and at that point in time I was nervous and  
5 concerned about the repeated statements that someone had been  
6 driving by my house in a black car, so I decided to drive by  
7 their residence to see and confirm if that was the vehicle or  
8 that was something different. I drove by the residence in my  
9 truck with the windows rolled up and did not say anything and  
10 exited the subdivision subsequently.

11       Q       And you said your family. Who was in the vehicle with  
12 you at that time?

13       A       My wife was in the front passenger seat and my two kids  
14 were in the rear seats.

15       Q       And how old are your children?

16       A       At the time I believe they were five and three.

17       Q       So did you interact with the Masters at any point  
18 during this time?

19       A       No, sir. When I drove by, my windows were up, didn't  
20 say anything. I do believe the mom and the dad were outside.  
21 I'm not sure what they were doing. I just recall two  
22 individuals being outside when I drove by, but did not  
23 appear -- there was no communication. My windows were up and  
24 nothing was said.

25       Q       So was that the end of the encounter then?

1       A       After I exited the neighborhood, I get back on 40  
2 Highway and continue eastbound. I believe in the area of 40  
3 Highway and 291 my windows were down at that point because my  
4 son likes to have the wind blown when he's in the backseat. I  
5 heard someone call my name, at which time I turned around and  
6 it was Mr. Masters, the father, Matt, that was in his vehicle  
7 who called my name and said, If you come by my house again,  
8 there's going to be trouble. Nothing further was said on his  
9 part or my part and we went our own ways.

10       Q       Did you ever go back by the Masters' house after that?

11       A       No, sir.

12       Q       Had you ever been by the Masters' house before that?

13       A       No, sir.

14       Q       When you drove by the Masters' house at the time you  
15 described, did you see a car that matched the description you  
16 were looking for?

17       A       No, sir. I believe there was only one vehicle in the  
18 driveway, some sort of SUV, but I did not observe a black  
19 vehicle in the driveway.

20       Q       Let's talk about the laser red dot on the Taser. Did  
21 you point the red dot at Bryce's chest?

22       A       I pointed in that general area, yes.

23       Q       And what did you do after you pointed the red dot?

24       A       The red dot, I believe, was initial warning and advised  
25 him he was going to be Tased if he didn't get out of the

1 vehicle.

2 Q So did you point the red dot and fire?

3 A No, sir.

4 Q So you pointed the red dot, you advised him that he  
5 would be Tased if he didn't get out of the vehicle?

6 A Correct. I believe that's when I reholstered it and  
7 then I brought the Taser out again, and at that point in time  
8 is when he continued to move in his vehicle and was spinning  
9 backwards when I applied the Taser.

10 Q You talked about him moving in the vehicle. How was he  
11 moving?

12 A He had spun sideways leaning backwards into the  
13 passenger seat. His feet were up in kind of a kicking motion  
14 towards me when I tried to grab him out. His hands were  
15 continually moving around so I couldn't see where they were  
16 going or what they were reaching for; and upon deployment of  
17 the Taser, he was continuing to lean backwards towards the  
18 passenger side of the vehicle.

19 Q You know when we watched the video, we know what  
20 happens. We know how this ends. When you're there at the  
21 scene -- when you were there at the scene, did you know what  
22 was going to happen?

23 A No, sir.

24 Q From second to second to second did you know how this  
25 was going to turn out?

1       A       No, sir, I did not.

2       Q       All right. So as you're standing there and you've got

3 Bryce Masters moving in the vehicle, he won't come out,

4 correct?

5       A       Correct.

6       Q       You say his hands were doing things you didn't always

7 know where his hands were?

8       A       Correct. He was moving them around as if he's

9 potentially reaching for something or trying to grab something.

10      Q       So as an officer, what does that cause you to do?

11      A       That raises a big red safety concern, red flag that you

12 need to keep visual on the hands and detain them as soon as

13 possible.

14      Q       There's a dash cam on your vehicle, correct?

15      A       Yes, sir.

16      Q       And you knew that at the time?

17      A       Yes, sir.

18      Q       And you knew it was activated?

19      A       Yes, sir.

20      Q       So you knew everything you were doing was being

21 recorded?

22      A       Yes, sir.

23      Q       Did that cause you any concern?

24      A       No, sir.

25      Q       Did you purposefully aim at Bryce Masters' chest when

1     you discharged the Taser?

2     A       No, sir.

3     Q       What was your purpose in discharging the Taser?

4     A       My purpose was to gain compliance to where I could get  
5     him in handcuffs.

6               MR. CUTLER:  At this time I have no further  
7     questions, Your Honor.

8               MR. PRESLEY:  If the Court please.

9               THE COURT:  Yes, sir.

10    CROSS-EXAMINATION BY MR. PRESLEY:

11    Q       Officer Runnels, allow me to hand you what we've marked  
12    as Exhibit 156.  Do you recognize that document?

13    A       Yes, sir.

14    Q       What is it?

15    A       I believe it's my initial report.

16    Q       Your initial report to whom?

17    A       For the car stop that day.

18    Q       Was this made a day or two after the accident or the  
19    encounter with Bryce?

20    A       It was made that same day.

21    Q       And you had a chance to think about what had happened?

22    A       Briefly.  It was made within a few hours of the  
23    incident.

24    Q       All right.  This was made within a few hours.  And at  
25    that time -- if you'll look at the bottom paragraph, the

1 sentence after "I requested a second unit from dispatch at this  
2 time." Did I read that correctly?

3 A Yes. About midsection of the paragraph?

4 Q Right.

5 A Yes.

6 Q Where it says you advised Bryce he was under arrest and  
7 to exit the vehicle. Bryce refused bracing his feet up against  
8 the driver's side door of the frame of the vehicle. Did I read  
9 that correctly?

10 A Sounds right, but I'm trying to find it.

11 Q It's the sentence before that. "Bryce again refused  
12 and began bracing his feet up against the driver's side door  
13 frame of the vehicle."

14 A Yes.

15 Q "I requested a second unit from dispatch at this time."  
16 Is that correct?

17 A Yes.

18 Q You had the option of waiting for backup to arrive and  
19 Bryce wasn't going anywhere, was he?

20 A At that time he was already physically resisting, so it  
21 was my determination to get him in custody.

22 Q Let's be real clear about what Bryce was doing. He was  
23 bracing his feet at that time, correct?

24 A At that time he made kicking motions and ultimately  
25 braced himself in the vehicle.

1 Q Where is that in your report?

2 A The bracing is but not the kicking.

3 Q So you failed to include that in your report?

4 A Well, it's not in there, yes, sir.

5 Q In addition, you say, "I reached for his left arm which  
6 he pulled away." Away from you, correct?

7 A I believe that was the time when I reached in and you  
8 can see me being pulled into the vehicle due to trying to grab  
9 him when he leaned backwards, yes, sir.

10 Q You stated in your report to your superiors, quote, I  
11 reached for his left arm which he pulled away, closed quote.  
12 Did I read that correctly?

13 A Correct.

14 Q You state, "I then reached for his left foot in an  
15 attempt to pull him out of the vehicle and he was able to pull  
16 away." Did I read that exactly?

17 A Yes.

18 Q You then say, "Bryce leaned further back into the  
19 vehicle pulling his hands away again." Did I read that  
20 correctly?

21 A Yes.

22 Q You then say, "He rebraced his feet on the driver's  
23 side door frame." Is that true?

24 A Yes.

25 Q And when he said -- when you said he pulled his hands



1 back, he had his cell phone in his hands, did he not?

2 A I believe he was holding it in one of his hands.

3 Q Let me hand you what we've marked as 172. This is a  
4 still from Bryce's cell phone video. Does that represent your  
5 position in respect to Bryce and his cell phone at the time you  
6 deployed the Taser?

7 A The Taser was not deployed in this photo, but it would  
8 be a fairly consistent position as far as when deployment was.

9 Q It looks like exactly where you were when you shot him  
10 in the chest, correct?

11 A Consistent with that, yes.

12 Q You go on to state in your report that you placed the  
13 red dot on Bryce's chest the first time, correct?

14 A Correct.

15 Q And did you place the red dot on his chest the second  
16 time?

17 A I placed it in that general area of the lower  
18 midsection area.

19 Q So would it be correct, then, at the time that you made  
20 your report, Exhibit 156, to your superiors that any action  
21 Bryce took was away from you, not toward you?

22 A Except for the bracing or possibly kicking.

23 Q You say possibly kicking but you never reported that.  
24 So my question is really very specific. As you reported it at  
25 the time, you did not say you were kicked, correct?

1       A           Not in my report, no.

2       Q           No. And, in fact, that's what you're telling us now;  
3 isn't that true?

4       A           No, sir. I told the other sergeants and stuff. It was  
5 just not in my report.

6       Q           And so, in addition, you told your superiors that you  
7 grabbed Bryce from behind underneath both shoulders -- we're on  
8 the second page now of 156.

9       A           Okay.

10      Q           -- and assisted him towards the curb between our  
11 vehicles to get him out of the flow of traffic for his safety,  
12 correct?

13      A           Correct.

14      Q           It wasn't to get off the dash cam, correct?

15      A           No, sir.

16      Q           "Bryce was moving his knees as if he was assisting me,"  
17 is what you reported. Did I read that correctly?

18      A           Yes.

19      Q           "As I was lifting him up by both arms to get over the  
20 curb, he then dropped his shoulders and went limp near the rear  
21 of the vehicle. I then dropped him and he fell to the ground  
22 striking his chin on the pavement." Did you initially tell the  
23 Independence Police Department that he slipped out of your  
24 grasp?

25      A           I don't believe I used those words, no.

1 Q So you always have admitted that you intentionally  
2 dropped Bryce Masters to the ground?

3 A I admitted, yes, that I dropped him to the ground.

4 Q And you did so intentionally?

5 A I did so with the purpose of getting him to the grass  
6 but not harming him.

7 Q I'm sorry?

8 A I did so with the purpose of trying to get him to the  
9 grass but not for the purpose of intentionally hurting him.

10 Q So you were trying to get him in the grass; is that  
11 correct?

12 A Yes, sir.

13 Q But you threw him down on the concrete driveway?

14 A He ultimately hit the concrete, yes, sir.

15 Q And that's where all the blood is, isn't it, from  
16 Bryce's chin?

17 A Yes, sir.

18 Q And let's take that drop just for a minute. As Mr.  
19 Cutler indicated, you pled guilty to depriving Bryce of his  
20 constitutional rights as it relates to the drop?

21 A Yes, sir.

22 Q And you appeared and spoke to the Court at a  
23 sentencing; is that true?

24 A Yes, sir.

25 Q And you told the Court at that time that, "Your Honor,

1     thank you for allowing me to speak today. To Bryce I'm deeply  
2     sorry for the pain, the physical and emotional stress and  
3     unrest you've experienced for the last year and a half." Did I  
4     read that correctly?

5     A           That sounds correct. I don't have it but it sounds  
6     correct.

7     Q           So are you sorry for the Taser?

8     A           I'm remorseful for the outcome, but at the time I  
9     believe it was an appropriate use.

10    Q           So I want to make sure you're telling this jury that if  
11    you had it to do over again, you believe you would do it  
12    exactly the same way?

13    A           I'm not sure if I can answer that. Based on what I  
14    knew at the time and the circumstances, I believe that I was  
15    acting appropriately with regard to the Taser.

16    Q           That's right. In the moment and faced with those  
17    circumstances, you would do it exactly the same way?

18    A           Based on what I knew at the time, I would still deploy  
19    the Taser.

20    Q           And you indicated -- and I'm a little confused about  
21    this because I want to make sure we're clear. You were trained  
22    and taught that a Taser works most effectively when you have  
23    probe spread; is that true?

24    A           That sounds correct, yes.

25               MR. PRESLEY: Can we pull up 172, Chris.

1 I would offer 156 and 172 at this time, Your Honor.

2 MR. CUTLER: No objection, Your Honor.

3 THE COURT: Received.

4 Q (By Mr. Presley) Do you have 172?

5 A Not yet, no.

6 Q It's in front of you, I believe, the photograph.

7 A Oh, okay. Yes.

8 Q So what does your training tell you the best distance  
9 for deploying the Taser for probe spread would be?

10 A I'm not specific on the best difference of probe  
11 spread. I know that larger the spread the more effective it  
12 generally is.

13 Q How far away from your suspect do you need to be to  
14 achieve good probe spread?

15 A I believe that varies on the individual. I'm not sure  
16 on the set distance.

17 Q You elected to use probe mode, correct?

18 A Yes, sir.

19 Q You made the conscious decision that you were going to  
20 use probe mode?

21 A Yes, sir.

22 Q And your training teaches you that you use probe mode  
23 when you want somebody to be incapacitated?

24 A Well, our training and IPD policy is probe mode is the  
25 preferred method of deployment.

1 Q And the reason is because you're trying to incapacitate  
2 a suspect?

3 A For gaining compliance.

4 Q Well, you want to review the training because we can  
5 look at that, but you've heard all the -- you've been present  
6 in the courtroom. You've heard everyone's testimony. Probe  
7 mode is to incapacitate the suspect or induce neuromuscular  
8 incapacitation. Isn't that your training?

9 A I believe ideally in the circumstances that is what we  
10 wish to obtain, yes.

11 Q So when you made the conscious decision to employ in  
12 probe mode and to shoot Bryce Masters from that position, did  
13 you anticipate that he would be incapacitated?

14 A I wasn't honestly for sure what to anticipate. This  
15 was my first and only deployment in the field.

16 Q Yeah. But you have training. You deployed it in  
17 training. You've seen the videos in training of how it's  
18 supposed to work, correct?

19 A How it's supposed to work, yes.

20 Q So in your mind when you deployed that Taser, you  
21 expected Bryce to be incapacitated; isn't that true?

22 A I believed him to stop resisting at that point in time  
23 with the Taser use.

24 Q Because he would be incapacitated. He couldn't do  
25 anything, right?

1       A       If that's what would happen, then yes.

2       Q       I mean, that's what probe mode's designed to do,  
3 correct?

4       A       Ideally, yes.

5       Q       And yet when you gave Bryce a command, you expected him  
6 to comply; isn't that right?

7       A       I gave him a command, yes.

8       Q       When he was being Tasered, you expected him to comply?

9       A       Yes. Because he was able to move, yes.

10      Q       Yes. Because you knew because you didn't have probe  
11 spread and you shot him in the heart that he wasn't  
12 incapacitated; isn't that correct?

13               MR. CUTLER: Your Honor, I object to the form of the  
14 question.

15               THE COURT: Sustained.

16      Q       (By Mr. Presley) Now, as soon as you Tased Bryce, he  
17 was under control enough for you to grab his cell phone and  
18 throw it, correct?

19      A       I took the object out of his hand at that time, yes.

20      Q       It wasn't an object. It was his cell phone, wasn't it?

21      A       I was not for sure until the end. I don't know what it  
22 is. We're not trained to have anybody point anything in our  
23 general direction.

24      Q       I just want to make sure you're telling this jury that  
25 from 172, that position, you could not determine that Bryce had

1 a cell phone in his hand?

2 A It looks like a cell phone, but that does not mean it's  
3 necessarily a cell phone.

4 Q So did it appear to be a cell phone?

5 A It appeared to be one, yes.

6 Q And did you have any hesitancy about grabbing it? Do  
7 you think it was an explosive or some other device?

8 A I don't know what it is. We had just previously  
9 received training on cell phones that are .22 cartridges, other  
10 Tasers. Until the scene is safe, we are not allow to have  
11 anybody pointing anything in our general direction.

12 Q So you grabbed the cell phone and tossed it away,  
13 correct?

14 A Correct.

15 Q And you had the presence of mind to say, "I told you.  
16 I told you so." Isn't that true?

17 A I said that, yes.

18 Q While you are continuing to Tase him, correct?

19 A I believe the Taser was still going, yes.

20 Q Yes. And the reason the Taser was still going was  
21 because you kept your finger on the trigger, correct?

22 A I hadn't got him in handcuffs or full control yet.

23 Q That's right. So you intended to keep deploying it  
24 until you had him in handcuffs, correct?

25 A I intended to let the five-second cycle go. I was not



1     aware that it had proceeded past five seconds.

2     Q       But you knew from your training that if you held down  
3     the trigger, you would continue to deliver current; isn't that  
4     correct?

5     A       Yes. But on that Taser I believe it would stop after  
6     five seconds.

7     Q       So did you continue to hold it down because you didn't  
8     think it was working?

9     A       I didn't know what was working. All I knew was in that  
10    moment second by second I was getting some sort of compliance;  
11    and until I was able to secure him in handcuffs, the Taser  
12    would continue.

13    Q       Now, you would agree that your Taser training tells you  
14    to avoid repeated or prolonged exposures; isn't that true?

15    A       I believe it says, yes, when practicable.

16    Q       And to avoid chest shots when possible, true?

17    A       That sounds correct. I don't have it in front of me,  
18    but that sounds correct.

19    Q       You could have -- at this point you could have backed  
20    up, you could have shot Bryce in the leg, correct?

21    A       That would have been a very difficult shot, and I would  
22    have been backing into traffic where I didn't know what was  
23    coming.

24    Q       So you didn't feel safe?

25    A       Not backing up into traffic and still having to deal

1 with the active resistance at hand.

2 Q Were you afraid of Bryce?

3 A I didn't know what was going to happen. I just knew I  
4 had a noncompliant active resisting subject at that moment in  
5 time.

6 Q And so you know that it would not be appropriate to  
7 Tase Bryce simply because you were frustrated with his  
8 noncompliance?

9 A Well, it depends. If you have active resistance, then  
10 it would be an appropriate use.

11 Q So my question is, is it okay to Tase people if they  
12 are not doing what you ask?

13 A Depends on what they're doing.

14 Q If they're seated in their vehicle, is it okay to Tase  
15 them?

16 A In this case I believe so, yes.

17 Q And is it okay to Tase them if they're just being  
18 belligerent?

19 A It depends on the situation. I would have to have more  
20 information.

21 Q If they're just seated and they say, Oh, I don't think  
22 my windows are tinted, is it okay to Tase them then?

23 A I would have to have more information.

24 MR. CUTLER: I would object to the question. It's a  
25 hypothetical question.

1 MR. PRESLEY: Let's look at Exhibit 8.

2 THE COURT: Objection sustained.

3 MR. PRESLEY: Page 13.

4 Q (By Mr. Presley) You were specifically taught and  
5 trained to not use CEW. That's a Taser, correct?

6 A What was the question?

7 Q You are specifically trained not to use a CEW. CEW is  
8 for a conducted electrical weapon or Taser, true?

9 A We're trained not to use it?

10 Q First of all, CEW is a Taser. Can we agree on that?

11 A Yes. Yes.

12 Q And you're taught and trained not to use your Taser for  
13 verbal defiance, belligerence, punishment, or horseplay, true?

14 A Yes.

15 Q And you're specifically taught that to avoid excessive  
16 force liability; isn't that correct?

17 A Yes.

18 Q Now, when you said, "All right, fuck it," was that a  
19 warning to Bryce that you were going to deploy the Taser?

20 A No. That was more just a slip of the tongue. I really  
21 didn't want to do deployment, but I felt I had given him ample  
22 options and deployment was necessary at that point in time.

23 Q So as it relates to options, you had the option of  
24 deploying the Taser in probe mode into his chest for five  
25 seconds by releasing the trigger and that did not occur, true?

1       A       The exposure was longer than five seconds if that's  
2 what you are asking, yes.

3       Q       No. You had the option of shooting him in the chest  
4 and releasing the trigger. That would deliver a five-second  
5 cycle and that was not what happened, correct?

6       A       That's not what happened. I believed the Taser was  
7 going to stop automatically in five seconds.

8       Q       You had the option of deploying the Taser in probe mode  
9 and not shooting him in the chest for five seconds; wouldn't  
10 that be true?

11      A       I deployed it in the best area I believed possible  
12 under the circumstances. The other areas were not feasible at  
13 that time.

14      Q       That's not my question. You had the option of  
15 deploying it for five seconds in some area other than the  
16 chest; is that correct?

17      A       The option, but it would not have been a practical  
18 option.

19      Q       So you're telling this jury that based on your  
20 proximity to Bryce Masters that you see in Exhibit 172, you  
21 couldn't have chosen a leg, you couldn't have chosen the  
22 abdomen, you couldn't have chosen a shoulder; is that true?

23      A       The fact that his arms and legs were continually moving  
24 left me with a very limited targeting area, and I attempted to  
25 deploy into the lower midsection; but due to his movements, the

1 impact area changes.

2 Q And so when you deployed the Taser, you also had --  
3 before you deployed the Taser, you also had the option of  
4 utilizing the Taser in drive-stun mode; isn't that correct?

5 A That would be an option, but it's not the preferred  
6 method of deployment with our department, and it wouldn't be  
7 very feasible due to the additional close proximity that would  
8 have been required.

9 Q Well, you have to be close. You have to be closer than  
10 what we see in 172 to use it in drive-stun mode?

11 A Drive stun is typically when you have a person that is  
12 not moving as much. When someone is moving, they can easily  
13 pull away from the drive stun. In this circumstance that's not  
14 applied here.

15 Q So drive stun is for pain compliance. You know that  
16 from your training, correct?

17 A Correct.

18 Q And so you had his shoulder, his arm. He had one hand  
19 on his cell phone which is from the phone to you in 172,  
20 correct?

21 A I believe he had -- yes.

22 Q Those are all options for drive stun proper targets,  
23 correct?

24 A Not practicable options. No.

25 Q You just couldn't do it?

1       A       It would not have been feasible due to his movements,  
2 no.

3       Q       Not feasible. And so the drive-stun mode is activated  
4 by your removal of the cartridge, correct?

5       A       Correct.

6       Q       And so when you pulled the Taser and dotted Bryce's  
7 chest as a warning instead of reholstering it, you could have  
8 had plenty of time to take out the cartridge to use it in  
9 drive-stun mode; wouldn't that be true?

10      A       That still wouldn't have been a good option and plus it  
11 would have tied both of my hands up when I had an active  
12 resisting person in front of me and that's not a safe thing to  
13 do.

14      Q       Now, you said you were sorry for the drop. You said  
15 you wouldn't do -- tell me. Are you sorry for using the Taser  
16 for 20 seconds in Bryce's chest?

17      A       I didn't know it was for 20 seconds after the fact. It  
18 was an unfortunate outcome; but based on the circumstances and  
19 his continued movement, I believe it was still appropriate even  
20 though I did not know it was for 20 seconds at that time.

21      Q       So you mentioned -- are you sorry for driving by the  
22 Masters' home a week before the grand jury was convened?

23      A       Am I sorry for it?

24      Q       Yes.

25      A       I was doing it based on the reports given to me out of

1 my own concern for him driving by my house.

2 Q I see. So how did you know Bryce had acquired a black  
3 Audi?

4 A Like I said before, I believe I had seen him leaving my  
5 vehicle -- leaving my subdivision in a black Audi.

6 Q You actually witnessed Bryce?

7 A I believed it was him but I hadn't confirmed it.

8 Q And so what day did that occur?

9 A I don't know. It was maybe a month before.

10 Q Were you scared at that time of a 17-year-old who had  
11 brain damage?

12 A I was concerned that I was getting multiple reports of  
13 an individual matching his description in a vehicle driving  
14 slowly by my house. Yes, I was very concerned.

15 Q So how did you know where the Masters lived?

16 A It was in the police report.

17 Q And so you went back to a police report to be able to  
18 locate their address?

19 A Yes, sir.

20 Q And that's when you followed them home?

21 A I did not follow them home, no, sir.

22 Q Well, you heard Ms. Masters' testimony about you being  
23 on 40 Highway, and it was right after that that you drove by  
24 their house; is that correct?

25 A That's what she said, but I did not follow anyone home.

1 When I drove by the house, they were outside of the house. I  
2 have no idea if they were moving in the vehicle.

3 Q So you never saw them on 40 Highway?

4 A No, sir.

5 Q It was your intention to take your family and to  
6 specifically go by Bryce's home by having his address from the  
7 police report; is that correct?

8 A It was a last-minute decision as we were driving by the  
9 area. I remembered it was close. So I chose to drive by due  
10 to all the reports I was receiving him being in my neighborhood  
11 and driving by my house.

12 Q And so what were you going to accomplish?

13 A I just wanted to confirm if this was the new vehicle,  
14 the black vehicle that was being reported to me or not.

15 Q Is there any doubt in your mind that the Taser caused  
16 Bryce to lose his ability to respond to your commands at the  
17 scene?

18 A I don't exactly know what your question is.

19 Q Sure. You Tased Bryce at the scene. You had him get  
20 on the ground. You asked him to put his hands behind his back.  
21 But he's unresponsive, correct?

22 A He did not comply with that order, correct.

23 Q And so did you assess his responsiveness then?

24 A I believed it was further noncompliance due to the fact  
25 he was able to move after the Taser deployment. There was no



1 reason for me to believe he wouldn't put his hands behind his  
2 back at that time.

3 Q So did you ever assess him -- I mean, once he was  
4 cuffed, did you ever assess him?

5 A I assessed him once I got him to the side of the road.

6 Q Once you got him to the side of the road, did you  
7 assess his responsiveness?

8 MR. CUTLER: Your Honor, may we approach?

9 THE COURT: Come up.

10 (Counsel approached the bench and the following  
11 proceedings were had:)

12 MR. CUTLER: I don't want to get too far afield into  
13 the medical leave issue. That was already ruled on by the  
14 Court. Proper settlement, all of that already has been ruled  
15 on by the Court.

16 MR. PRESLEY: We're just going to causation.

17 THE COURT: For what?

18 MR. PRESLEY: For causation on his lack of  
19 responsiveness.

20 MR. CUTLER: He has no foundation.

21 MR. PRESLEY: That's the question.

22 THE COURT: I kind of lost track where you were.

23 MR. PRESLEY: I'm asking him specifically about  
24 whether he assessed Bryce's responsiveness at the time he asked  
25 him to put his hands behind his back or at the curb.

1 MR. CUTLER: And I did not object to him asking  
2 about responsiveness when he was in the street and told to put  
3 his hands behind his back. Once he is at the curb, the issue  
4 of assess -- did you check, did you see what he was doing.

5 THE COURT: You can ask him about putting his hands  
6 behind his back and his responsiveness at that point but not  
7 further.

8 (The proceedings returned to open court.)

9 Q (By Mr. Presley) So when you told us you acquired the  
10 Masters' home address by obtaining a police report, who gave  
11 that to you?

12 A No one did. It was in my police report.

13 Q And you had a copy of it?

14 A Yes, sir.

15 Q And so what -- were you planning on confronting the  
16 Masters?

17 A No, sir. I just simply wanted to confirm if there was  
18 a vehicle parked outside matching the description that was  
19 given to me.

20 Q And so did you ever report these repeated reports that  
21 you had to any law enforcement agency?

22 A Law enforcement, no. I reported it to my attorney at  
23 the time.

24 Q Same attorney who was representing you for your  
25 criminal charges?

1       A           Correct.

2       Q           And you were indicted for the Taser event, correct?

3       A           That was one of the indictments, yes.

4       Q           But you chose not to accept responsibility for that; is  
5 that true?

6                   MR. CUTLER: Your Honor.

7                   THE COURT: Sustained.

8                   MR. PRESLEY: Nothing further.

9                   THE COURT: Do you want to take a break now or do  
10 you want to finish up?

11                   MR. CUTLER: I have seven minutes probably. I've  
12 got maybe seven minutes, if that much. So if I can continue.

13                   THE COURT: Then we could probably have recross. So  
14 I think we'll go ahead and take a break now. Okay?

15                   MR. CUTLER: Yes, sir.

16                   THE COURT: All right, ladies and gentlemen, we're  
17 going to take a break for 20 minutes. Let's be back in the  
18 jury room at ten till eleven. And keep the instruction I've  
19 given you previously in mind, as I know you will.

20                   Thank you.

21                   (The following proceedings were had in the courtroom  
22 out of the presence of the jury:)

23                   THE COURT: Keith, how much more evidence are you  
24 going to have after Mr. Runnels?

25                   MR. CUTLER: I am reasonably sure he's our last live

1 witness or maybe all the evidence.

2 MR. PRESLEY: Are we done with evidence?

3 MR. CUTLER: After we redirect and possibly recross,  
4 I think that will be the close of the defendant's evidence.

5 THE COURT: Okay. Thank you. I'll be back.

6 (Recess at 10:30 a.m.)

7 (The following proceedings were had in the courtroom  
8 out of the presence of the jury:)

9 THE COURT: Thank you. You can all be seated.  
10 Ready, Mr. Cutler?

11 MR. CUTLER: Yes, sir.

12 THE COURT: Mr. Presley?

13 MR. PRESLEY: Ready, Your Honor.

14 THE COURT: Mr. Runnels, would you come back up to  
15 the stand, please.

16 And, Lisa, would you bring the jury back in.

17 (The following proceedings were had in the presence  
18 of the jury:)

19 THE COURT: Thank you very much. Everyone can be  
20 seated.

21 TIMOTHY RUNNELS resumed the stand and testified:

22 THE COURT: And, Mr. Runnels, I'll remind you that  
23 you are still under oath, sir.

24 THE WITNESS: Yes, sir.

25 THE COURT: Mr. Cutler.

1 MR. CUTLER: Thank you, Your Honor.

2 REDIRECT EXAMINATION BY MR. CUTLER:

3 Q Mr. Runnels, when Mr. Presley was asking you questions,  
4 he had you look at the report you made, and there were  
5 references to Bryce pulling away. Do you recall that  
6 testimony?

7 A Yes, sir.

8 Q And I think the report indicates you reached for his  
9 hand and he pulled it away?

10 A I believe so, yes.

11 Q Okay. And you reached for his leg and he pulled it  
12 away?

13 A Yes. I attempted to pull him out by his leg and he  
14 pulled away.

15 Q Okay. And in your experience as a police officer, when  
16 someone is resisting being arrested, is that what they do?

17 A That would be considered active resistance, yes.

18 Q Mr. Presley also asked you about whether you would take  
19 the same actions with a Taser if you had this to do all over  
20 again. Let me ask you about the drop so that we're clear. If  
21 you had this to do all over again, would you drop Bryce Masters  
22 again?

23 A No, sir.

24 Q You would do it differently?

25 A Yes, sir.

1 Q I'm sorry. You wouldn't drop him at all?

2 A No, sir.

3 Q Is that correct?

4 A Correct.

5 Q Mr. Presley also asked you some questions, as I did,  
6 about your receiving information that a young man in a black  
7 car was driving slowly past your house and that you believed  
8 you saw him at one point driving past your house. Do you  
9 recall that testimony?

10 A Yes, sir.

11 Q And we talked about what you did in response to that,  
12 i.e., driving by the Masters' house to look to see if you could  
13 see a similar car. What else did you do in response to the  
14 reports you were receiving that a young man in a black car was  
15 driving by your house?

16 A We purchased some security cameras, installed a  
17 security surveillance system on our house.

18 Q Why would you do that?

19 A Just from the multiple reports and the situation going  
20 on at the time I was concerned that something may occur so I  
21 put some cameras up on the house.

22 MR. CUTLER: No further questions, Your Honor.

23 MR. PRESLEY: No recross, Your Honor.

24 THE COURT: Thank you, Mr. Runnels. You can go back  
25 to your seat.

1 (Witness excused.)

2 THE COURT: Mr. Cutler.

3 MR. CUTLER: Your Honor, the defense has no more  
4 evidence and the defense rests.

5 THE COURT: Thank you.

6 Mr. Presley.

7 MR. PRESLEY: No rebuttal, Your Honor.

8 THE COURT: I'm sorry.

9 MR. PRESLEY: No rebuttal.

10 THE COURT: Thank you.

11 All right. Ladies and gentlemen, that concludes the  
12 evidence in the case. I have to do some work on the final  
13 instructions on the case, and that will take a little bit of  
14 time. I'm going to give you a little bit longer lunch break  
15 and obviously start it early here, but I fully anticipate that  
16 the attorneys will have the opportunity -- I'll read my final  
17 instructions to you, the attorneys will argue the case, and it  
18 will be submitted to you for your consideration this afternoon.

19 I'm going to ask you to be back in the jury room at  
20 a quarter till one, and I apologize for the downtime for you  
21 all in that regard, but there is some work that needs to be  
22 done; and when I read the final instructions to you, you'll see  
23 what I'm talking about in that regard.

24 I do want you to keep in mind the instruction I've  
25 given you previously. You are not to read, view, or listen to

1 any media reports about the case.

2           You're not to do any research about the case on the  
3 Internet or any other source. You're not to talk with anyone  
4 by way of oral communication or social media or any type of  
5 messaging.

6           If anyone is talking about the case in your presence  
7 or attempts to approach you about the case, you are to let me  
8 know about it.

9           We will be back with you at a quarter till one. So  
10 we'll see you then.

11           Thank you.

12           (The following proceedings were had in the courtroom  
13 out of the presence of the jury:)

14           THE COURT: So I'm not asking for further input from  
15 the attorneys at this point in time, but I do want to tell you  
16 what my general plan of instruction is, and you will be given  
17 another round of instructions, and I'm sure that they will all  
18 be properly numbered in this submission.

19           I intend to submit both claims, the claim on  
20 excessive force for deployment of the Taser, and that will be  
21 on the proposed continued deployment as offered by the  
22 plaintiff given that they are withdrawing any claim for the  
23 initial deployment.

24           I also intend to give an affirmative defense to that  
25 instruction that encompasses a reasonable belief of resistance



1 and/or noncompliance; and, additionally, a required finding of  
2 intentional deployment.

3           Pretty much the rest of the instructions will not  
4 have significant changes beyond what we've already talked  
5 about, but that's going to be the key and significant change  
6 for submission to the jury; and once I get that all put  
7 together, you'll get a copy of it, and we'll meet again when we  
8 can make any further record that counsel has.

9           MR. PRESLEY: The only potential conflict -- I'm  
10 kind of flying blind based on the Court's comments. There is  
11 that tail. It's Footnote 11 to 4.4.0 in the Eighth Circuit  
12 model rules about submitting the officer's state of mind, and  
13 it says specifically without regard to any motivation, blah,  
14 blah, blah. So there's the potential for conflict as relates  
15 to that as it might relate to any intentional submission. So  
16 if we do submit an intentional submission, then obviously that  
17 has to come out or we would need to resolve that in some way.

18           THE COURT: Thank you for mentioning that.

19           Just for purposes of the record, a continued  
20 deployment, I believe, is different than a successive  
21 deployment; and if that continued deployment is not  
22 intentional, then I believe that qualified immunity would  
23 apply. So at any rate we'll talk about it further. Let's say  
24 let's get back together at a quarter till 12.

25           MR. PRESLEY: We'll be ready.

1 MR. CUTLER: I do have one other thing, Your Honor.  
2 To protect my record, of course, I need to make my motion for  
3 judgment, as a matter of law, at the close of all the evidence.  
4 The Court has heard the arguments, so I will just incorporate  
5 all those arguments right now by reference and would move that  
6 the Court grant judgment in favor of Defendant Runnels, as a  
7 matter of law.

8 THE COURT: All right. Thank you.

9 MR. PRESLEY: And we would just, by way of  
10 supplement, we'd incorporate our same arguments as well, Your  
11 Honor. Not to belabor this, but there is uncontroverted proof  
12 of the excessiveness of this force. There's been no evidence  
13 from the defendant and in an expert capacity of any kind that  
14 would show that Officer Runnels' actions were objectively  
15 reasonable.

16 THE COURT: Are you talking about the drop?

17 MR. PRESLEY: As to either event. I mean, there's  
18 simply been no expert testimony by the defendant of any kind in  
19 support of Officer Runnels' conduct.

20 THE COURT: Well, it doesn't have to be expert  
21 testimony. It's a question of fact. It's up to the jury.

22 MR. PRESLEY: I agree this is a fact issue. I would  
23 just make that point in addition to our previous record since  
24 we didn't know that until the close of the defendant's  
25 evidence.

1           THE COURT: All right. Motion for directed verdict  
2 at the close of all of the evidence is taken and considered on  
3 the basis as stated and it's denied.

4           Thank you. I'll be back at a quarter till 12.

5           (The noon recess was taken at 11:05 a.m. until 12:45  
6 p.m.)

7                           AFTERNOON SESSION

8           (The following proceedings were had in the courtroom  
9 out of the presence of the jury:)

10          THE COURT: Thank you. You can be seated.

11          First of all, Mr. Presley, you forwarded to my  
12 office an alternative proposed affirmative defense instruction  
13 No. 13, and the reason I worded Instruction No. 13 as I did is  
14 because I believe that at the time Officer Runnels was entitled  
15 to take into consideration all of the circumstances, and I  
16 believe that by saying, "As the Taser was discharged," that the  
17 instruction references the duration of the discharge, and that  
18 permits counsel to argue accordingly, not only the  
19 circumstances that presented as the Taser was initially  
20 discharged but as it continued to be discharged beyond that  
21 initial five-second period. So I'm going to deny your offered  
22 Instruction No. 13. I dated it today. Marked it as having  
23 been offered by the plaintiff and denied.

24          MR. PRESLEY: That would be Plaintiff's B, as I  
25 understand it, Your Honor; is that correct?

1 THE COURT: Yes.

2 MR. PRESLEY: Thank you, Your Honor.

3 THE COURT: Do you have any other -- well, first of  
4 all, all of the record we made regarding the instructions and  
5 the objections posed by counsel are considered as a part of the  
6 record and are denied.

7 In addition to that, do you have anything further  
8 that you'd like to address in the latest version of  
9 instructions?

10 MR. PRESLEY: I do, Your Honor, and these, I think,  
11 may just be oversights. I do not see our stipulated fact  
12 instruction.

13 THE COURT: I wasn't aware that you wanted that.

14 MR. PRESLEY: Yes. That was in our proposed and it  
15 was in the initial package that Rhys provided, so we ask the  
16 stipulated fact instruction be given.

17 THE COURT: Mr. Cutler, do you have any objection to  
18 that?

19 MR. CUTLER: No, sir.

20 THE COURT: We'll stick it in there.

21 MR. PRESLEY: The next one, Your Honor, is also I  
22 believe I'm tracking this correctly and I sent everybody an  
23 email on this as to Instruction 18. At the very last sentence  
24 of the big paragraph.

25 THE COURT: Yes. We referred to the wrong

1 instruction.

2 MR. PRESLEY: That should be the damage  
3 instructions.

4 THE COURT: It should say reference Instructions 14  
5 and 17. I think you got that.

6 MR. PRESLEY: I just got this. Okay. Great.

7 Then I do just want to make a brief supplemental  
8 record since we've amended our proposed verdict director,  
9 No. 12, the conduct specifically.

10 THE COURT: All right.

11 MR. PRESLEY: If the Court please, Your Honor, and  
12 cognizant of the Court's ruling; but in furtherance of our  
13 record in support of our proposed tendered instruction  
14 Exhibit A, Plaintiff's Exhibit A, first of all, we believe that  
15 the evidence is uncontested that there were a combination of  
16 factors that brought about plaintiff's brain injury. Those  
17 included his disruption of his cardiac rhythm ultimately  
18 resulting in cardiac arrest, all of which led to anoxic  
19 contribution to brain cell death.

20 In addition, Dr. Dennis testified that the drop and Mr.  
21 Masters' subsequent positioning with his chin near his chest  
22 with the tongue falling forward would not provide a clear and  
23 unobstructed airway, and that Mr. Masters was at a turning  
24 point in his rhythm had he been able to breathe appropriately  
25 and ingest oxygen, it would have contributed to the potential

1 recovering back to a sinus rhythm before he entered V-fib, and  
2 that the deprivation of breathing ability as a result of his  
3 post-drop placement was a contributing factor to his ultimately  
4 entering into ventricular fibrillation and his cardiac arrest  
5 and ultimate anoxic brain injury.

6           So because of that, we would ask that the conduct of  
7 the defendant as submitted in Exhibit -- in our most recent  
8 verdict director that we proposed to the Court, which included  
9 not just the Taser current into the plaintiff's chest for 15  
10 seconds but also the drop in one package would be the most  
11 appropriate way to submit those claims and to a single  
12 Verdict A; and as such, we believe that it was a continuous  
13 event of excessive force with different modalities by the same  
14 officer; and as such, that conduct led to a unified and  
15 unfortunate result.

16           So, in addition, because we have elected not to  
17 submit on the initial deployment of the Taser in probe mode  
18 into plaintiff's chest for the trained and well-recognized  
19 cycle of five seconds, for which there is numerous citations in  
20 the record as to the training and conduct of officers to limit  
21 the cycle to five seconds and to reassess, we would object to  
22 the submission of any version of Instruction 13 as being  
23 duplicative of the Graham factors, and that the fact that Mr.  
24 Masters was not in compliance with Officer Runnels' order to  
25 remove himself from the vehicle did not justify this use of

1 force and is not immune; and as such, plaintiff's are entitled  
2 to have Instruction 13 omitted completely.

3           However, in the alternative we have proposed in  
4 conjunction with our modified verdict director focusing on the  
5 continuation of the discharge beyond the five seconds, we've  
6 asked that 13, that we marked as Exhibit B, be tendered at this  
7 time limiting Mr. Masters' resistance, compliance to the post  
8 five-second deployment of the initial Taser cycle as well as  
9 Defendant Runnels' continued discharge throughout the remaining  
10 20 seconds of the total discharge.

11           Thank you, Your Honor, for allowing me to make that  
12 record.

13           THE COURT: Thank you. Those objections and  
14 requests are noted for the record and they're denied.

15           Mr. Cutler, do you have anything that you'd like to  
16 address beyond what has already been brought forward?

17           MR. CUTLER: Yes, sir, Your Honor. With respect to  
18 Instruction No. 12, it has a paragraph fourth in there, and I  
19 don't think that should be denominated paragraph fourth. The  
20 phrase, "unless you believe the plaintiff is not entitled to  
21 recover on Instruction No. 13," that should be a standalone  
22 sentence, not part of the elements of the --

23           THE COURT: That's the way the model -- Eighth  
24 Circuit model has it, which I had to double-check that myself,  
25 but that's the way it's set forth in the Eighth Circuit model.

1 And it is a little bit of a mind twist, but I think that it is  
2 stated correctly.

3 MR. CUTLER: Okay.

4 THE COURT: In that you have to find for the  
5 defendant unless you believe the plaintiff -- if you believe  
6 the fourth element. If any of the elements have not been  
7 proved but your finding must be for defendant.

8 MR. CUTLER: Okay.

9 THE COURT: That's the way it is.

10 MR. CUTLER: Then next, Your Honor, with respect to  
11 Instruction No. 14, then with respect to the physical pain,  
12 again, I don't believe there's been any evidence that he's  
13 reasonably certain to experience any physical pain in the  
14 future.

15 THE COURT: Well, Mr. Presley did offer some  
16 evidence, not extensive, but some evidence of continued  
17 physical pain and/or discomfort, and so I'm going to deny your  
18 objection to that.

19 MR. CUTLER: Yes, sir.

20 Then with respect to Verdict A on page 27, I think  
21 the version we have, the last paragraph refers to Bruce Masters  
22 as opposed to Bryce.

23 THE COURT: Thank you.

24 MR. CUTLER: Then in the same place on page 28, next  
25 page, Verdict B, as in boy.



1 THE COURT: Thank you. Those corrections will be  
2 made.

3 MR. PRESLEY: The only other oversight issue, Your  
4 Honor, was packaging instruction for Verdict C too. Keith and  
5 I talked about that.

6 MR. CUTLER: Yes, sir, we agree.

7 THE COURT: I'm sorry. What's that?

8 MR. PRESLEY: If we need a 2.05 for Verdict C, just  
9 a packaging instruction for Instructions 18 and 19; otherwise,  
10 they're just kind of loose in there without any reference or  
11 application.

12 THE COURT: All right. Pursuant to that record, I'm  
13 going to put the final instructions together, and we'll be back  
14 and we'll proceed at that time.

15 MR. PRESLEY: Great. Thank you.

16 (Recess taken at 12:50 p.m.)

17 (The following proceedings were had in the courtroom  
18 out of the presence of the jury:)

19 THE COURT: Thank you. You can be seated.

20 All right, Lisa, would you bring the jury in.

21 MR. CUTLER: Your Honor, before we do that.

22 THE COURT: All right. Hold on.

23 MR. CUTLER: I wanted to bring something to the  
24 Court's attention. I let plaintiff's counsel know an hour,  
25 hour and a half ago, that during closing argument, I would like

1 to make an adverse inference of the plaintiff not taking the  
2 stand. No inference about him not being in the courtroom  
3 during the trial but him not taking the stand. I didn't want  
4 it to be a surprise during closing argument.

5 THE COURT: All right. Thank you.

6 Do you want to speak to that?

7 MR. PRESLEY: Just that he's equally available. I  
8 mean, we've had him here at the courthouse. All he's got to do  
9 is ask and put him on the stand.

10 THE COURT: He's a party plaintiff so you're  
11 entitled to argue an adverse interest.

12 MR. CUTLER: And concomitant with that issue there  
13 should be no argument from plaintiff's counsel about why he  
14 didn't take the stand because that's not in evidence.

15 MR. PRESLEY: Well, the reason he didn't take the  
16 stand is he has no memory of the event.

17 MR. CUTLER: There's no evidence of that.

18 THE COURT: There's no evidence of that. You can't  
19 argue something that's not in evidence.

20 MR. PRESLEY: Precisely. But Mrs. Masters testified  
21 to that, that he has no memory of the event.

22 MR. CUTLER: He may not have a memory of the event,  
23 but there's no evidence as to why he wasn't here in court --  
24 I'm sorry -- to testify. He can testify about his damages, how  
25 he feels. There's lots of things he can testify to that are

1 relevant to this case. Because he has no memory of the actual  
2 event, that doesn't mean he doesn't have anything to testify  
3 to. My point is there's no evidence as to why he didn't  
4 testify. So because there is no evidence of it, there can't be  
5 any argument as to why he didn't testify.

6 THE COURT: Well, there was testimony that he has no  
7 memory of the events, but I'm sure that your adverse inference  
8 that you wish to have drawn will go way beyond that in terms of  
9 damages.

10 MR. CUTLER: Correct.

11 THE COURT: And substantiating what his condition is  
12 and what his struggles are and why he's in the circumstance  
13 that he claims to be in.

14 MR. CUTLER: Yes, sir.

15 THE COURT: You can certainly argue all of that. I  
16 think that the plaintiff can argue that the testimony was that  
17 he does not have memory of the event.

18 MR. PRESLEY: Thank you, Your Honor.

19 MR. CUTLER: Well, that he does have memory of the  
20 event or he doesn't have memory of the event as a reason why he  
21 didn't testify?

22 MR. PRESLEY: I'll limit it to just that he has no  
23 memory of the event.

24 THE COURT: All right.

25 MR. MCCOY: Judge Fenner, we do have one

1 modification to the stipulation of facts. It looks like we  
2 used an old version, and we just need to take out two words.

3 Keith, that's on paragraph 21.

4 THE COURT: So you're taking out paragraph 21?

5 MR. McCOY: No. We're just taking out the "or kick"  
6 part on that.

7 THE COURT: Okay. So "or kick" comes out. All  
8 right. Rhys will make that modification. Or, Janelle, can you  
9 do that? And then just bring it to me and make sure that the  
10 extra copies we have for the jurors are changed as well.

11 All right, Lisa, would you bring the jury in.

12 (The following proceedings were had in the presence  
13 of the jury:)

14 THE COURT: Thank you. Everyone can be seated  
15 again.

16 Ladies and gentlemen, thank you for your patience  
17 I'm now ready to read my final instructions to you, and then  
18 the attorneys will have an opportunity to argue the case to  
19 you.

20 All the instructions are in writing. You will have  
21 copies of the instructions for your reference in the jury room.  
22 You can certainly take notes as you go along, but you will have  
23 copies, written copies of these instructions for you.

24 I'll begin, as Rhys displays them on the screen,  
25 with Instruction No. 7.

1 (Court reads Instructions Nos. 7 through 19 and  
2 Verdict Forms A, B, and C, inclusive.)

3 THE COURT: Mr. Presley, are you ready to begin your  
4 argument?

5 MR. PRESLEY: I am, Your Honor.

6 THE COURT: Very well.

7 PLAINTIFF'S CLOSING ARGUMENT

8 MR. PRESLEY: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 MR. PRESLEY: Counsel.

11 Ladies and gentlemen, at the very beginning of this  
12 case back on Monday I opened with these words, "rules for  
13 police conduct that must be followed to protect citizens from  
14 the abuse of power." However, those rules are meaningless  
15 unless juries like yourselves enforce them. That is the power  
16 that's invested in you as a jury; and to do so, you have to  
17 follow your sworn oath to adhere to the Court's instructions  
18 and the evidence that's been presented to you.

19 So it's my opportunity and it's my job at this time  
20 to walk you through those instructions. You've been given a  
21 lot of information, and I want to make sure that we understand  
22 how mechanically you go about rendering your verdict in this  
23 case.

24 And your verdict is important in this case because  
25 it should be right and it should be just and it should be a

1 verdict that you collectively agree upon and speak with one  
2 voice, and that voice has power. It has the power to change.  
3 It has the power to influence the course of human events, and  
4 that is an awesome responsibility, and you all have diligently  
5 sat and paid close attention and taken numerous notes, and for  
6 that we're eternally grateful.

7           So let's start with the easy part, if there is an  
8 easy part to this, and that's Verdict B. If we can look at  
9 Verdict B in this case. As his Honor has told you, Verdict B  
10 is related to the drop. It refers specifically to Instruction  
11 16. There are two separate verdicts; one for the Taser event  
12 and one for the drop. Because of that, we need to just refer  
13 back to Exhibit 16; and so when the foreperson has the ability  
14 to look at Verdict B, then you have to turn to what's called  
15 the verdict director. That's Instruction 16. And it tells you  
16 the elements to that.

17           And so the first element is, "Defendant Runnels  
18 dropped plaintiff to the ground while plaintiff was handcuffed  
19 with his hands behind his back." And there's just no dispute  
20 about that. That's a stipulated fact. And you've seen the  
21 video and you've heard Officer Runnels' testimony about that  
22 and he's pled guilty to violating plaintiff's constitutional  
23 rights. So he's already admitted in the criminal aspect of  
24 this case that his force was excessive and it was unnecessary  
25 and it was unreasonable; and for those reasons, he pled guilty

1 and he's serving his debt to society, but he's not paid his  
2 debt to Bryce Masters. And so when you look through those, you  
3 see that the second element is met by admission.

4 The third element, "As a direct result, the  
5 plaintiff was injured." And that gets to be a little more  
6 complicated. Now, it's easy to look at the pictures that are  
7 in evidence, see the blood on the concrete. The report from  
8 the treating dentist in the hospital talks about the fractured  
9 teeth.

10 But what makes the drop damages difficult to  
11 determine is the fact that Dr. Dennis has testified that  
12 because of the drop and the prone position of Bryce's chin  
13 toward his chest, that blocked his airway and made it difficult  
14 for him to breathe. And as you'll recall Dr. Dennis'  
15 testimony, Bryce was in a transition period. He'd experienced  
16 this tachycardia after the cardiac capture during the Taser  
17 discharge, then he's in this disrupted or what he called  
18 dyssynchronous rhythm. You'll remember the pig heartbeat. It  
19 was kind of beating all over the place. And it progressed from  
20 there into ventricular fibrillation. And we know it's V-fib  
21 because if you look at the ambulance report, you'll see the  
22 very first EKG they got, and it looks exactly like this. It  
23 looks like a quivering heart.

24 And so the critical piece for Bryce is that we --  
25 Dr. Dennis' opinion was that his inability to breathe

1 contributed to his inability to return to a sinus rhythm like a  
2 lot of people with five-second discharges even to the chest can  
3 do instead of having that disrupted rhythm over the 20-second  
4 period continue on into V-fib.

5           If Bryce had been in a recovery position, Dr. Dennis  
6 said that his absence of being able to breathe appropriately  
7 was a contributor. Could he say how much? Not exactly. But  
8 it was a contributing event to the anoxic injury and the  
9 difficulty of Bryce receiving oxygen to his brain.

10           So what I would suggest to you is that we evaluate  
11 the brain injury as a whole and then apportion between the  
12 Taser event and the drop what you believe to be based on the  
13 evidence and the facts, and Dr. Dennis' testimony on the  
14 positioning is uncontroverted. Dr. Vilke never addressed that.  
15 Not only did he never tell us what caused Bryce's cardiac  
16 arrest, he never addressed once the positional problem with  
17 Bryce's breathing being blocked.

18           Your tongue falls forward when you're unresponsive,  
19 and the very first thing you know from CPR is you get them on  
20 their back, you get the chin up, you check their airway, and  
21 that was important for Bryce because he might have turned the  
22 corner, he might not have gone into V-fib and a great portion  
23 of his brain injury might have been eliminated; and that's why  
24 I suggest to you that when you determine the amount to write  
25 in, Verdict B is relatively easy for you because of the



1 uncontested and stipulated facts. And so you write in Bryce  
2 Masters.

3 And then the next line you have to fill out is what  
4 are the damages? And so before we address the global  
5 responsibility of Defendant Runnels for the brain injury, let's  
6 discuss the Taser, and that is going to be Verdict A. And so  
7 on Verdict A the Court asked us to consider Instructions No. 12  
8 and 13.

9 And so it's important that Instruction 12 guide your  
10 deliberations just as Verdict A says, once again, in the same  
11 form as the drop. The first paragraph describes the conduct.  
12 This is very important because we want to make sure that your  
13 verdict is right and just for these particular facts and for  
14 this particular conduct.

15 So the conduct that's being submitted to you as  
16 excessive is the continued deployment of the Taser current into  
17 plaintiff's chest for 15 seconds when arresting him. That's a  
18 very critical submission because by your verdict, we are not  
19 seeking to take Tasers out of responsible officers' hands.  
20 Police officers have a hard job. They encounter unknown  
21 events. They should have at their disposal the tools that  
22 they've been taught and trained, if they are able to follow  
23 that training, and to use those tools appropriately.

24 And so by your verdict we're not submitting to you  
25 that even the initial Tasing decision was wrong or excessive.

1 Even though if we look at the continuum of force, even though  
2 Officer Runnels could have chosen to utilize anything other  
3 than the greatest potential risk of harm with a Taser shooting  
4 a skinny 17-year-old kid in the chest and holding it down for  
5 20 seconds.

6 So what's below that? Well, he could have still  
7 shot him in the chest in violation of his training; but if he'd  
8 just pulled the trigger and let go as he was trained to do  
9 instead of standing over him saying, "I told you so" after  
10 throwing his phone and holding it right over him, and you've  
11 seen the video, and that's why Bryce hasn't testified here. He  
12 doesn't have a memory of this event. The video is our record,  
13 and so that is what -- we've offered nothing that's  
14 contradictory to the video evidence that we leave to your  
15 determination.

16 And so when you look at Exhibit 12 and the continued  
17 discharge, there's no question that the deployment of the Taser  
18 is for a five-second cycle only. You heard Sergeant Blackmore.  
19 He's done it three times in cases where it was clearly  
20 appropriate; running, fleeing burglary victims, people  
21 surrounded by knives under a crawl space. These are the right  
22 circumstances to deploy them. He never needed more than five  
23 seconds with serious criminals who are threat -- immediate  
24 threats of harm to Sergeant Blackmore.

25 And that's why all the millions of deployments in

1 the field that Dr. Vilke testified about, well, I should hope  
2 so, because if you follow your training, you're not going to  
3 injure anybody. If you do the right thing and deliver the  
4 right dose, those people are not going to suffer anything other  
5 than what Officer Grasher said was the worst pain I've ever  
6 experienced. But it's for a short period. It's for a short  
7 period.

8 And so when you look at the continuum of force to  
9 decide whether paragraph second, the force used was excessive,  
10 that's where the continuum comes in. He uses the most severe  
11 gradient of force. He does not shoot him in the heart, release  
12 for five seconds. He does not shoot him with good probe spread  
13 to really incapacitate him, even if that's what he intended to  
14 do when he's commanding him to get out of the car.

15 The next level of force is drive stun. He had the  
16 opportunity to unholster and holster his weapon. He could have  
17 pulled the cartridge and just zapped him right on the foot,  
18 zapped him right on the leg. You think a 17-year-old kid needs  
19 much more guidance than that? Some of the worst pain that he  
20 can experience?

21 So the least amount of force would be just to start  
22 the stop the right way. Tell Bryce why he's being pulled over.  
23 Tell him why he's under arrest. He never does any of that.  
24 And he escalates the situation and it's enhancing the conflict.  
25 It's almost like he's spoiling for a fight. It's almost like

1 he's just being a bully, and that's just not right and that's  
2 just not just.

3 So in addition to finding that the force was  
4 excessive by using the maximum amount of force he could  
5 possibly deploy on a Taser when there was no immediate threat  
6 of harm; and if you will recall from 149 -- if you'll recall  
7 from 149 -- I'm sorry -- it's 3. This is the officer/violator.  
8 We covered that. That was even found sustained by his own  
9 department.

10 But let's go to 3, Chris.

11 That's how this stop should have been handled. If  
12 we go to deployment, "The CEW is generally authorized to be  
13 used in circumstances where grounds to arrest or detain are  
14 present and the subject's actions cause a reasonable officer to  
15 believe that the subject is an immediate threat to an officer  
16 or civilian." And it goes on to say, "And that physical force  
17 will be used by the subject." So even if you say that Bryce  
18 was going to use physical force at some point when all he's  
19 doing is trying to get away, where is the immediate threat to  
20 the officer? Everything Bryce did was pull him away.  
21 Everything he did was try to stay in his car. And so you have  
22 to ask yourself, who is being threatened with force as he's  
23 sitting there? Is it Runnels or is it Bryce? And that's the  
24 analysis.

25 And if we look at the Instruction No. 13, because

1 you have to find not only the elements that are submitted in  
2 12, you also have to find the elements in Instruction 13, and  
3 this is a critical instruction, because the Court has told you  
4 what the law is, and the law is that you must find that  
5 Defendant Runnels, "had a reasonable belief that plaintiff  
6 Bryce Masters was actively resisting arrest as the Taser was  
7 discharged," and that's the magic language, because we're  
8 claiming only the 15-second continued deployment. It's as the  
9 Taser was discharged. And so if you find that as the Taser was  
10 discharged that plaintiff was failing to comply or Defendant  
11 Runnels continued the Taser discharge unintentionally, your  
12 verdict must be in favor of Defendant Runnels.

13           So let's break that down. So was Bryce not  
14 complying? Yes. But was he not complying as the Taser was  
15 discharged? And we know from our stipulated facts that will be  
16 in your instructions, we know on 39 and 40 of the stipulated  
17 facts that, "During the Taser discharge, plaintiff did not  
18 attempt to hit, kick, or flee from Runnels." It is stipulated  
19 and agreed in this case that, "During the Taser discharge  
20 plaintiff complied with all commands given by Runnels." The  
21 only command he didn't comply with was putting his hands behind  
22 his back when he was unconscious. And so that's not -- these  
23 are the stipulated facts.

24           And so as it relates to whether or not Bryce was  
25 actively resisting or failed to comply during the Taser

1 discharge, there's no dispute because there's no evidence to  
2 the contrary.

3           The question then is during the continued Taser  
4 discharge was it unintentional? And that's when you have to  
5 take Officer Runnels' testimony. His testimony was not that it  
6 was inadvertent or that it was unintentional. He didn't think  
7 it was working, and so that's why he lost track of the time  
8 because he shot Bryce in the chest and he continues to stand  
9 over him. He takes his cell phone and throws it. He tells him  
10 "I told you so," and he follows him right down to the ground  
11 with the wires; and when Bryce hits the deck, that's the pain  
12 that you hear when he cries out from the darts getting even  
13 closer to his heart. Darts getting closer to the heart to  
14 disrupt his normal rhythm, to introduce that spinning --  
15 remember when I talked about a propeller spinning out of the  
16 water? That's what those pig hearts looked like when Dr.  
17 Dennis showed you the videos. They were beating so fast you  
18 could barely keep up with them. If you just let that trigger  
19 go, it lets that capture go. It sets that heart free and gives  
20 it the opportunity to return to rhythm; but as we know, in the  
21 15 seconds after the discharge and the initial five, here's  
22 what happened.

23           (Video played.)

24           MR. PRESLEY: Right. So is it unintentional when  
25 he's got the presence of mind to throw his cell phone? Chat on

1 the radio? Talk about his Taser deployment? Listening to that  
2 click, click, click, click, click, click, click? It's an  
3 audible warning. That's part of the safety mechanism in this  
4 Taser device, as Mr. Leonesio told you. And so as we go  
5 through Verdict A --

6 THE COURT: Mr. Presley, you've used 20 minutes.

7 MR. PRESLEY: Thank you, Your Honor.

8 And as you look at Instructions 12 and 13 -- so as  
9 we look at Verdict A, it specifically refers to the key  
10 instructions, Instructions 12 and 13. And so then the issue  
11 regarding Bryce's damages from the brain injury comes back  
12 around, and it's the combination of not only his cardiac arrest  
13 and his anoxia from the dyssynchronous rhythm and ultimately  
14 his V-fib, which was documented at the scene, but it comes in  
15 on the drop, and so what I would suggest to you is that we look  
16 at the damages that are collectively as a brain injury issue.

17 For the economic loss you heard Dr. Tabak based on  
18 Mr. Dreiling's vocational rehabilitation report provide you  
19 with information regarding the differential between Bryce's  
20 potential average college graduate earning capacity and that of  
21 an average high school graduate. That was about 1.25. Then  
22 the worst case scenario is he doesn't even go back to earning  
23 what an individual with an average high school -- or below  
24 average high school earning capacity does in the 25th  
25 percentile, then it goes up to 1.9. And that's just the pure

1 economic loss.

2 That doesn't count one dime for the past damages of  
3 Bryce's hospitalization, Bryce's rehabilitation, Bryce's senior  
4 year in high school as the brain damaged kid, and the  
5 frustration and anger that surfaced in a kid that was  
6 extroverted, happy, with lots of friends, someone who saw the  
7 good in everything and everybody, and that kid never left South  
8 Side Street. That kid never came back when they resuscitated  
9 him.

10 And so I suggest to you that for the last four years  
11 since this has occurred, that that amount for all that he's  
12 gone through with his hospitalization, his rehab, his OT, his  
13 PT, his speech therapy, his dental work -- well, no the dental  
14 work is on the drop. Let's keep that separate. I would  
15 suggest to you an amount of \$2 million.

16 But the real component on this is the future for  
17 Bryce. He's got 56 years left, 56 years of frustration, 56  
18 years of having more bad days than good days, 56 years of being  
19 more unsuccessful, in getting to work on time, and remembering  
20 where you're going and why, remembering where your phone is,  
21 where my keys are. He's got 56 years.

22 And, ladies and gentlemen, he's still got physical  
23 problems from the brainstem injury. He doesn't even notice it  
24 but he'll clench up involuntarily. As you heard his mother  
25 testify, he's not sure-footed now. He's clumsy. He drops



1 things. They've replaced a dozen phones. And my kids, their  
2 phones are never broken. It's never out of their hands. They  
3 never lose them. It's like a part of them. And for Bryce, he  
4 doesn't know where it is half the time, and that is a testimony  
5 to his confusion, his memory loss, his difficulties with  
6 executive level functions, the kind of kid with an above  
7 average to superior intellect but now has to process and try  
8 and apply that intellect in the real world through a  
9 brain-damaged filter, and that's the disconnect. And he's got  
10 a lifetime ahead of him of having to cope and deal with that on  
11 a daily basis, and he it's led to his depression and it's led  
12 to his anxiety. And for that we would total that at 5 million  
13 for the next 56 years.

14 And so if you add all that together, it comes to  
15 between 8.25 and 8.9 million. And so what I would suggest to  
16 you that for the drop and just the physical injuries and the  
17 insult to Bryce's face and teeth, I would suggest a figure of  
18 \$50,000. And then for the blocked airway and the fact that Dr.  
19 Dennis uncontroverted, no doctor -- Dr. Vilke never addressed  
20 that, says that that contributed to his brain damage, I would  
21 say that that is a smaller component. So the damages from the  
22 drop I would suggest to you are between 1.3 and 1.9 million.

23 And so when you go back to the Taser event and you  
24 write those in, you should deduct the drop damages and reduce  
25 that amount to a net amount.

1           And, ladies and gentlemen, it's part of my job to  
2 give you these numbers and give you the guidance in finding  
3 damages. That's what I do for a living. And this is the best  
4 guidance I can give you, but you should be guided by your own  
5 amount. You don't have to use my number. You can do more.  
6 You can do less. You are the ultimate deciders of those facts,  
7 and so we leave that to your discretion and your sound  
8 judgment.

9           And so when we complete Verdicts A and B, we write  
10 Verdict A and we write \$7 million; and then when you fill in  
11 Verdict B, you can fill in 1.3 to 1.950, and those will render  
12 your verdicts in this case. If you want -- if you feel that  
13 what happened on the street on September 14th, 2014, was not  
14 right and not just, this is how you make Timothy Runnels  
15 responsible finally for his actions and his conduct.

16           But you don't have to stop there. You don't have to  
17 stop there. The Court has given you Instruction No. -- or  
18 Verdict C, and Verdict C relates to the liability phase for  
19 punitive damages in this case; and as the Court instructed you  
20 on punitive damages, and you only get to this point if you find  
21 in favor of Bryce Masters under either Instructions 12 and 13  
22 for the Taser package. So you can render a verdict in Bryce's  
23 favor for A and you can render a verdict in Bryce's favor on B  
24 or one or the other, but the punitive damage finding, if you  
25 want to get to the punitive liability in this case, the

1 egregious conduct, the reprehensible conduct, if you want an  
2 opportunity to assess damages at the second phase of this  
3 trial, which will be very short, a matter of minutes, if you  
4 want that opportunity, then you have to find that Timothy  
5 Runnels is liable for punitive damages in this case.

6 And I would tell you that as it relates to the drop,  
7 again, I don't think there's any question that that kind of  
8 reprehensible conduct that drew a four-year prison term in the  
9 federal penitentiary is something that jurors should speak out  
10 on and speak strongly about, and that's what you do when you  
11 find liability for punitive damages.

12 And, further, since we've limited the Tasering event  
13 to the most severe use of force, this is your opportunity to  
14 find that Mr. Runnels is liable for punitive damages as  
15 submitted in Instructions No. 12.

16 And so, ladies and gentlemen, that is the mechanism  
17 for finding your jury verdict. You are the sole arbiters of  
18 how that gets sorted out. We leave to your sound discretion  
19 the finding on punitive damages, and we would submit to you  
20 that if you want to be in a position to tell not only Tim  
21 Runnels but every law enforcement agency, every cop on the  
22 street, if you want to tell them that what happened here was  
23 wrong, this is your vehicle to do it. If you find him liable  
24 for punitive damages, you'll have that opportunity in the  
25 second phase of the trial.

1           And so you're the ones who will decide the facts,  
2           and fortunately many of the facts are not in dispute. You'll  
3           have the stipulated facts in your instructions. You'll have  
4           the uncontroverted testimony of Dr. Dennis.

5           Of all the parade of police officers that came  
6           before you, who stood up for Timothy Runnels? Who said to you  
7           this was okay? No one.

8           Of all the use-of-force experts that are out there  
9           in the country, like Mr. Leonesio, who told us about the Taser  
10          and how it should be used and when it's appropriate, who did  
11          the defendant bring you? No one.

12          And because of that, we believe that the liability  
13          of Defendant Runnels for both the Tasering and the drop is  
14          excessive. It violates the very constitution that protects us  
15          all as citizens but only if you enforce it, only if you say  
16          this is what the constitution really means.

17          Thank you.

18          MR. CUTLER: May it please the Court.

19          THE COURT: Mr. Cutler.

20          MR. CUTLER: Thank you, Your Honor.

21                       DEFENDANT'S OPENING STATEMENT

22          MR. CUTLER: Mr. Presley.

23          First of all, ladies and gentlemen, let me say thank  
24          you for your time and attention this week. I think I can speak  
25          on behalf of both parties that we sincerely appreciate you

1 taking your time to serve as jurors in this case to help the  
2 parties to resolve the dispute that has arisen between them.

3 I know this week you all have heard probably more  
4 about pig studies and probe spread and NMI and ventricular  
5 fibrillation than you thought you'd ever hear and probably ever  
6 want to hear. So we do really appreciate your attention and  
7 time this week.

8 During jury selection, the judge asked every one who  
9 was here if they could follow the law. Even if they disagreed  
10 with what the judge told them what the law was, could they  
11 follow it. Everybody who was here had an opportunity to answer  
12 that question. And because you all are sitting here, that  
13 means you answered the question yes or did not respond that you  
14 couldn't follow the law.

15 So the judge has now given you the law. He's given  
16 it to you in the written instructions. And because of your  
17 oath as jurors, you have to follow the law as the judge gives  
18 it to you. Even if you disagree with it, even if you think it  
19 shouldn't be a certain way, even if you think it should be  
20 different, you all have taken a sworn oath to follow the law as  
21 the judge gives it to you, and I have no doubt that you all  
22 will do that. Now, we're going to talk about the instructions  
23 in a minute.

24 What I would like to talk about first is \$8 million.  
25 That's how much the plaintiff is asking you all to give him, \$8

1 million. What damages has he suffered? You heard me in  
2 opening statement kind of go through what Bryce's life is like  
3 now. You heard that testimony from his mother about what he  
4 has done since this accident -- since this incident. How he  
5 has not applied to any colleges, how he has not attended or  
6 visited any colleges, how he has not taken any college entrance  
7 exams, how he has not taken any online classes or any in-person  
8 classes. Because the damages are because of his brain injury,  
9 the allegation is he can't do these things, but he hasn't  
10 tried.

11 Not only has he not tried, you heard Dr. Price, the  
12 neuropsychologist, the only medical person who's qualified in  
13 this case to say whether he can go to college or not. What was  
14 her testimony? Yes, he can go to college. So in terms of what  
15 his damages are from this incident, that he has a brain injury  
16 and he can't go to college, therefore, because he can't go to  
17 college, he can't get the kind of job he would get as a college  
18 graduate and because of that, he can only get a job of a high  
19 school graduate and the pay differential. Their own doctor  
20 says there's no reason he can't go to college. There's no  
21 reason he cannot successfully complete college. So because of  
22 that, the only evidence in this case is there is no  
23 differential. He can do it. All of that goes out the window  
24 in terms of damages.

25 But, you know, what's Bryce doing now? We talked

1 about that. I don't want to run through the whole list but you  
2 remember the testimony. Bryce plays video games. He hangs out  
3 with his friends. He drives. He manages his own bank account.  
4 He's living with his girlfriend. He is leading a normal life.  
5 If you remember that list that we talked about, if you remember  
6 his mother's testimony, he's living a normal life of a  
7 21-year-old. He's not living an \$8 million deprived life.

8 Now, I can say that. His mother can testify. His  
9 attorney can talk about it. We can all talk about what Bryce  
10 can or can't do. The person you should hear it from is Bryce.  
11 Did you? Did you hear Bryce come in here and tell you what he  
12 can do? Did you hear him get on the stand and tell you what he  
13 can't do? Absolutely not. And because Bryce chose not to come  
14 in here and not to get on that stand and not to sit here and  
15 tell you what he's going through and tell you what's wrong with  
16 him subject to cross-examination, because he chose not to do  
17 that, you all are allowed to presume that what he would have  
18 said would have been unfavorable to him. You're allowed to  
19 presume that and that makes sense.

20 Timothy Runnels, I mean, he's a person who's serving  
21 time for what he did. He came and sat in this chair right here  
22 and told you, he looked you in your eye and said, yes, this is  
23 what I did. This is what I did. I'm sorry for what I did.  
24 I'm paying for what I did. He sat here and told you that.  
25 Looked you in your eye. Subject to cross-examination. Where

1 was Bryce? Where's the person asking you to give him \$8  
2 million? Where is he? Because he didn't take that chair,  
3 because he didn't come in here and sit there and look you in  
4 your eye, you are allowed to presume that whatever he was going  
5 to say was going to be unfavorable to his position that he  
6 can't do these things. Unfavorable to his position that he's  
7 having all these ongoing problems. You can presume that what  
8 he was going to say is going to be unfavorable to his position  
9 that he needs whatever he needs or he's supposed to get  
10 whatever he's going to get. You can presume that that would  
11 have been unfavorable to his position.

12 Now, Mr. Presley is trying to conflate two things.  
13 He's trying to combine two things. He's trying to combine the  
14 brain injury and the drop. He's trying to put them all  
15 together. That because of the drop, you know, he should get  
16 this amount for brain injury.

17 He says the testimony is uncontroverted that those  
18 two are together and referred to, I believe, Dr. Dennis. I  
19 have two words for him. Dr. Arkin. Dr. Arkin was a  
20 neurologist. He came here and he told you about what he  
21 observed in the video as to when he believed Bryce started  
22 showing the signs that led to his alleged brain injury, and I  
23 stood right in this spot and I specifically asked Dr. Arkin,  
24 When did you see those signs? And he said he saw those signs  
25 as Bryce was getting out of the car. Then I asked him --



1 because we talked about the first time Bryce was on the ground  
2 and the second time Bryce was on the ground. Do you remember  
3 that? I said, So you think that the signs that eventually led  
4 to Bryce's alleged brain injury happened the first time he was  
5 on the ground? Dr. Arkin said yes. So, therefore, it wasn't  
6 caused by the second time he was on the ground, the drop? Dr.  
7 Arkin said yes.

8 So Mr. Presley says it's uncontroverted that the  
9 brain injury is related to the drop. Yes, it is. It's  
10 controverted. Not only do we controvert it, their own experts  
11 controvert it. How can there be any medical certainty to it if  
12 both of their experts are saying two different things? The  
13 drop has nothing to do with the Tasing. The Tasing has nothing  
14 to do with the drop. They're two separate incidents.

15 We talked about the drop. As I mentioned, Timothy  
16 Runnels has admitted that he should not have done that. If he  
17 had a chance to do it again, he wouldn't do it. He recognizes  
18 it was wrong. He pled guilty to it. And he's serving time for  
19 it. That's the drop.

20 The Tasing is another issue. Why? Because Bryce  
21 was resisting arrest. There's no dispute about that.  
22 Everybody who came in here told you Bryce was resisting arrest.  
23 Not only resisting arrest, actively resisting arrest because  
24 that was the question I asked them. I used the word "active."  
25 Each of them said Bryce was actively resisting arrest. That's

1 why the Tasing was reasonable.

2 That's why it was not a violation of department  
3 policy. The former chief of police came in. We're not talking  
4 about just an investigator or just someone, the chief, the top  
5 person, the head of the department came in and told you, I  
6 looked at this. I looked at everything that was gathered. I  
7 looked at all of the evidence, and I made the determination  
8 that what Officer Runnels did was not a violation of policy.  
9 There was not evidence enough to say that he violated policy.  
10 So, yes, Mr. Presley's talked to you about the policies and all  
11 that. There wasn't a violation of the policies.

12 The other thing I want to mention to you before we  
13 get to the jury instructions, I want to talk to you about the  
14 pig studies. I know we've heard a lot about pig studies. I  
15 want to talk to you about the pig studies because we've got  
16 this big medical gap here we have to fill. The defense is  
17 arguing, is maintaining that the Tasing did not have -- did not  
18 cause Bryce's brain injury. So that leads to a big question.  
19 Well, what did? We don't know. We haven't offered any  
20 evidence of what caused his brain injury because we don't know.  
21 It's not our burden of proof.

22 It's the plaintiff's burden of proof to show what  
23 caused Bryce's brain injury, and the theory that they've  
24 advanced is that the Taser captured Bryce's heart. There was a  
25 two-minute-and-one-second gap and then Bryce went into

1 ventricular fibrillation and cardiac arrest. That's what their  
2 doctor, Dr. Dennis, came in and testified about. It's not  
3 medically supported.

4           You heard Dr. Vilke this morning come in and tell  
5 you why it's not medically supported, why it doesn't happen,  
6 why when someone gets Tased, if there's going to be any type of  
7 electrocution, as the way he phrased it, it happens  
8 immediately. It doesn't happen two minutes after the fact.

9           He talked to you about the pig studies. Why do they  
10 use pigs? Because pigs go into VF very quickly. If you're  
11 doing medical research, of course you want to enhance the  
12 chance of that -- whatever you're testing is going in to V-fib  
13 so you can test it. That makes sense. That's why they use  
14 pigs. Its not a translation to what a human would do. And out  
15 of the 7,000 pigs that have been tested for this, only one pig  
16 went into VF after a delayed period of time after being shocked  
17 with a Taser. One pig out of 7,000 ten years ago with pigs  
18 already being more susceptible to going into VF. That is not  
19 medical certainty. That's a theory that hasn't been tested.  
20 It hasn't been proven. It has never happened in humans.

21           Now, Dr. Dennis talked about the pacemaker. Dr.  
22 Vilke explained that. Yes, a person who is Tased with a  
23 pacemaker is going to go into -- have cardiac capture because  
24 that's what a pacemaker does. It captures the heart. So it  
25 goes right down the wires to the heart. That makes sense. But

1 you can't translate that to say, okay, well, that's what  
2 happened to Bryce Masters. Bryce Masters didn't have a  
3 pacemaker. Bryce Masters is not a 40-pound pig. Bryce Masters  
4 is a six-one, 170-pound teenager who resisted arrest and got  
5 Tased; and then at some subsequent point with all medical  
6 evidence, research, literature had a heart attack and went into  
7 cardiac arrest. Why did that happen? We don't know. But we  
8 know it didn't happen according to the way plaintiff says it  
9 happened because it's not supported by the medical research.  
10 It has never happened in a human being that's been documented.

11 Now, let's talk about the jury instructions. Mr.  
12 Presley kind of walked you through the instructions a little  
13 bit. I want to talk to you about them a little bit more. The  
14 instructions are going to be altogether but they're kind of  
15 separated by what we call packets.

16 So you see Instruction 11. The instructions leading  
17 up to that, 1 through 10, are kind of general instructions. So  
18 when you get to Instruction No. 11, it tells you what claim  
19 we're talking about. The two claims here; one for -- three  
20 claims actually. One for the Taser, one for the drop, and one  
21 to determine is Timothy Runnels liable for punitive damages.  
22 So three different claims.

23 This instruction gives you information about the  
24 first claim, the damages for excessive force for the use of the  
25 Taser. It tells you that Instructions 12 through 14, along

1 with Instructions 1 through 10, are going to apply to that  
2 claim. So when you're talking about trying to -- when you get  
3 back to the jury room and you're trying to figure out, okay,  
4 let's talk about the Taser. Let's say you want to talk about  
5 that first. Let's talk about the Taser. Instructions 12  
6 through 14 are the ones you're going to look at.

7 What does Instruction 12 tell you? Instruction 12  
8 tells you what you must find, "Your verdict must be for  
9 plaintiff." So this is what you have to find in order to find  
10 in favor of the plaintiff with respect to the Tasing. And  
11 there are three things there. First, that Officer Runnels  
12 continued deploying the Taser current into plaintiff's chest  
13 for 15 seconds when arresting him. Second, the force used was  
14 excessive because it was not reasonably necessary to arrest the  
15 plaintiff. And, third, as a direct result, plaintiff was  
16 injured.

17 Now, I just talked about the direct result part and  
18 how it is not supported by the medical evidence. So even if  
19 you get down to the third one about as a direct result, not as  
20 a possible result, not as an indirect result, as a direct  
21 result. So if you start with the premise that there is no  
22 evidence that Bryce Masters 'brain injury was a direct result  
23 of the Taser, you can't speculate. And I told you there's a  
24 gap in the medicine. In that, well, if that didn't do it, what  
25 did? And it's very easy for you all to say, Well, we don't

1 have any other reason so that must have been it. You can't do  
2 that. You actually have to have medical certainty to show that  
3 his cardiac arrest came from the Taser, direct evidence, and  
4 it's not there.

5 But the biggest thing in Instruction No. 12, it  
6 comes after paragraph third, because you can find all three of  
7 those things. But then it says, "Unless you believe the  
8 plaintiff is not entitled to recover under Instruction 13."

9 Let's take a look at Instruction No. 13.  
10 Instruction 13 says, "If you find that defendant Timothy  
11 Runnels had a reasonable belief that plaintiff Bryce Masters  
12 was actively resisting arrest as the Taser was discharged, that  
13 plaintiff was failing to comply, or Defendant Runnels continued  
14 the Taser discharge unintentionally, your verdict must be in  
15 favor of Timothy Runnels. The burden to prove this is on the  
16 defendant," Timothy Runnels.

17 Let's break that down. You got Instruction 12 and  
18 Instruction 13. Instruction 12 will apply unless 13 applies;  
19 and so if you find, according to Instruction 13, that defendant  
20 Timothy Runnels had a reasonable belief that Bryce Masters was  
21 actively resisting arrest as the Taser was discharged. There's  
22 no dispute he was actively resisting arrest. Everybody that  
23 has come in here has told you that Bryce Masters was actively  
24 resisting arrest. So the first one's there.

25 The second one. That plaintiff was failing to

1     comply. Everybody that has come in here told you he was  
2     failing to comply. From the beginning of this encounter all  
3     the way through until he was Tased. He failed to roll down his  
4     window. He failed to get out of the car when Officer Runnels  
5     told him to. Officer Runnels told him he was under arrest and  
6     tried to get him out of the car. He failed to get out of the  
7     car. Once he was Tased, he got out of the car and got down on  
8     the ground; but even after Officer Runnels is standing there,  
9     he says, Put your hands behind your back, he doesn't do it. So  
10    at that point Officer Runnels had to get down and place him  
11    under arrest. But it's clear that Bryce Masters was actively  
12    resisting and that he was failing to comply.

13             The third, and this is in the disjunctive, and I  
14    don't want to get into a big English grammar lecture here, but  
15    that "or" is a huge word. It's a huge word because you don't  
16    have to find all three of those. It can be one, two, or three.  
17    If you find that even one of those applies, your verdict must  
18    be in favor of Defendant Runnels with respect to the Tasing.

19             The third one, then, because we've talked about  
20    actively resisting. We know that happened. But even if you  
21    get past that, you look at plaintiff was failing to comply. We  
22    talked about that. But even if you get past that, it says,  
23    Your verdict must be for Defendant Runnels if Defendant Runnels  
24    continued the Taser discharge unintentionally. And the only  
25    evidence that we've heard about whether there was an

1 intentional discharge was from Officer Runnels. He told you it  
2 was unintentional. I didn't realize five seconds had gone by.  
3 You heard the testimony from everybody who looked at the video  
4 that Bryce Masters did not achieve neuromuscular  
5 incapacitation. He didn't respond the way people respond  
6 normally to Tasers. So Officer Runnels in that moment, Bryce  
7 is not responding the way people respond to Tasers, he didn't  
8 realize that 20 seconds had elapsed. He's not standing there  
9 counting one Mississippi, two Mississippi, three Mississippi,  
10 four. He's not doing that. He's got an active situation.  
11 He's got a person who is not incapacitated who is getting out  
12 of the car. Police officers face very dynamic, evolving,  
13 rapidly-changing situations. They're watching the person in  
14 front of them to make sure that everything goes the way it's  
15 supposed to go. So, no, he's not counting seconds as this  
16 Taser discharge is going on. He's trying to get the plaintiff  
17 in handcuffs, to get him arrested. So, yes, it was  
18 unintentional.

19           So when you look at Instruction 13, your verdict  
20 must be in favor of defendant Timothy Runnels if any of those  
21 three incidents apply. Our position is that all three apply  
22 but you don't have to agree on all three. As long as one of  
23 them applies, then your verdict must be for Timothy Runnels.

24           Now, we kind of talked about the damages a little  
25 bit and the fact that Bryce Masters did not come into court to



1 testify and tell you about his damages, but you've heard the  
2 evidence of what his lifestyle is like now, the things he does,  
3 things he doesn't do. Don't do chores around the house, no  
4 laundry, no making up his bed, hanging out with his friends,  
5 going to the Lake of the Ozarks for Memorial Day weekend, those  
6 kinds of things. That's what he is doing now. And he didn't  
7 come in here because he didn't want to have to tell you that.

8           So when the Instruction No. 14 talks about the  
9 physical pain, the mental, emotional suffering that he's  
10 experienced and will experience in the future, you've got your  
11 evidence about what he's experiencing.

12           Now, the second thing, the reasonable value of  
13 earning capacity. Let's talk about Mr. Dreiling. He was the  
14 vocational rehab person who came in to tell you about this big  
15 disparity in income that Bryce will have over his lifetime, and  
16 we talked about how he used national numbers versus numbers in  
17 Kansas City. We talked about how he used the median as opposed  
18 to the mean. We talked about how he just picked a number  
19 because that was what he thought he should pick. We talked  
20 about how he chose 870 just because he wanted to choose 870.  
21 We talked about all of that.

22           The big thing we talked about with Mr. Dreiling was  
23 it was not based on any medical evidence whatsoever. I asked  
24 him specifically, What doctor, what medical record, what do you  
25 have that shows that Bryce cannot do these certain jobs or

1 cannot do any job and will have some type of inability to  
2 perform a job that's going to cause him to have a wage earning  
3 loss? And he said it was not based on any medical evidence.  
4 This is just his experience.

5 Now, he hasn't followed up with Bryce. You haven't  
6 heard any testimony about him evaluating Bryce since he  
7 initially saw him. The reasonable value of the earning -- what  
8 is that based on? You saw the number that Mr. Presley put up.  
9 What is that based on? It's not based on anything medical.

10 Bryce had a job with the Kansas City Chiefs. He was  
11 there. He was doing a good job. He got promoted. He was  
12 supervising other people. How do you ask for \$8 million if  
13 you're in a job where you're supervising other people and  
14 you're able to hang out with your friends and play Xbox and do  
15 all those kinds of things? How do you do that? How do you not  
16 come into court and ask you for it? So in terms of the  
17 damages, the damages, ladies and gentlemen, are not there.

18 Now, let's talk about -- let's talk about the drop,  
19 because Instructions 16 through 17 pertain to the claim of  
20 Bryce Masters against Timothy Runnels for excessive force by  
21 the drop to the ground. As I mentioned, Officer Runnels has  
22 already told you, yes, he did that. He is sorry for it. He's  
23 paying the price for it. If he had the chance to do it, he  
24 wouldn't do it again.

25 So with that instruction you have another damages

1 instruction. "If you find in favor of the plaintiff, you must  
2 award him an amount of money that will fairly compensate him  
3 for any damages you find he sustained as a direct result of the  
4 violation of the plaintiff's constitutional rights by being  
5 dropped to the ground." So Instruction No. 17 is limited to  
6 the damages that Bryce had from being dropped to the ground.

7 Now, I'm not going to insult your intelligence and  
8 tell you that it didn't hurt. I'm sure it hurt. I know it  
9 hurt. So, yes, he was hurt when he was dropped to the ground.  
10 There's no doubt about that. You saw the medical records when  
11 he went to the hospital and they took X rays. There was some  
12 damage. No doubt. Now, there were no fractures. You saw that  
13 in the medical records. No fracture, no fracture to the jaw or  
14 anything like that. He did have some teeth that had some  
15 injury, but that was four years ago.

16 What evidence have you heard that he's continuing to  
17 have dental pain right now? What evidence have you seen that  
18 says he can't eat, he can't speak, he has difficulty doing  
19 this, he has recurring pain? You've heard no evidence of that  
20 whatsoever regarding being dropped to the ground.

21 Again, I'm not excusing him being dropped to the  
22 ground. Don't get me wrong. It was a wrong thing to do and  
23 Officer Runnels told you that. But this instruction says you  
24 have to -- if you find for him, you will award him an amount of  
25 money that will fairly compensate him for being dropped to the

1 ground.

2 Now, you should consider the physical pain,  
3 suffering that plaintiff has experienced. We talked about  
4 that. The nature of the injury. We talked about that.  
5 Whether the injury is temporary or permanent. What evidence  
6 have you seen where this is a permanent injury? It shouldn't  
7 have happened but it did, but you have seen no evidence  
8 whatsoever that it is a permanent injury.

9 And whether any resulting disability is partial or  
10 total. What disability? There's been no evidence he's been  
11 disabled by this drop to the ground dentally.

12 Now, the last paragraph of that is very important.  
13 I want you all to look at that. It says, "Remember, throughout  
14 your deliberations you must not engage in speculation, guess,  
15 or conjecture, and you must not award any damages under this  
16 instruction by way of punishment or through sympathy." That's  
17 important. Because working with this case, I've seen the video  
18 a lot of times. And I told you at the beginning it was a very  
19 disturbing video, and you will see things in that video that  
20 should not have happened. I told you that. That was the thing  
21 out of my mouth when I talked to you all on Monday. So I know  
22 how disturbing that video is to watch somebody get dropped to  
23 the ground. But this instruction specifically tells you you  
24 must not award damages by way of punishment or through  
25 sympathy. Your damages under this instruction for him being

1 dropped to the ground are limited to the physical pain that he  
2 experienced, the nature of the injury, and whether it's  
3 temporary or permanent, and if there's any resulting  
4 disability. That's what your damages under this instruction  
5 are limited to. As bad as we may feel for him having been  
6 dropped to the ground, as bad as that was, your damages cannot  
7 include anything by way of sympathy, and it cannot include  
8 anything by way of punishment for compensatory damages.

9 Now, let's talk about Instruction No. 18. I won't  
10 read it, but this instruction simply says that in addition to  
11 what we just talked about, the liability for the Taser and the  
12 liability for the drop. In addition to that --

13 THE COURT: Mr. Cutler, excuse me for a moment.  
14 Could you and Mr. Presley come up?

15 (Counsel approached the bench and the following  
16 proceedings were had:)

17 THE COURT: When I read that instruction, I reworded  
18 it. It doesn't have all of the language as to Instruction  
19 No. 13. I revised it and this is what I'm giving to the jury.

20 (The proceedings returned to open court.)

21 MR. CUTLER: Okay. Instruction No. 18. It  
22 essentially says that if you find that the conduct, even with  
23 respect to the Taser or with respect to the drop, was malicious  
24 or recklessly indifferent to plaintiff's federally protected  
25 rights, then you may, but are not required to, award the

1 plaintiff an additional amount as punitive damages.

2           So the first thing I want to point out is it has to  
3 be malicious or recklessly indifferent. We know the Tasing was  
4 not malicious or recklessly indifferent. It was for the  
5 purpose of getting Bryce Masters under arrest and under  
6 control.

7           With respect to the drop, it should not have  
8 happened, no doubt. But was it malicious? Was it recklessly  
9 indifferent? It should not have happened. People make  
10 mistakes. People make errors in judgment. But you all have to  
11 determine, Was it malicious or recklessly indifferent?

12           The instruction goes on further to say, "The  
13 purposes of awarding punitive damages are to punish the  
14 defendant for engaging in misconduct and to deter the defendant  
15 and others from engaging in similar misconduct." So in  
16 deciding whether to determine that Officer Runnels is liable  
17 for punitive damages, you have to determine what the purpose of  
18 you doing that is, and it says, The purposes are to punish the  
19 defendant and to deter him. He's been deterred. He's in  
20 federal prison. I don't know how much more deterred you'd get  
21 than having to go to prison and give up your liberty. So he's  
22 already been deterred. So as you determine should we assess  
23 him punitive damages and the purpose of that is to deter him  
24 from like conduct, I think he's been deterred. I think there's  
25 no doubt about that.

1 All right. So now that takes us to the verdict  
2 forms. And Mr. Presley's already been through that with you.  
3 Verdict A, this deals with the Taser. He, of course, Mr.  
4 Presley wants you to write the name Bryce Masters on the line.  
5 I, of course, want you to write the name Timothy Runnels on the  
6 line. But it's not just what I want. It's what the evidence  
7 shows. And the evidence shows, again, going back to  
8 Instruction No. 13 because you really don't get to write on the  
9 line just what you want. You have to write what the evidence  
10 shows. You have to follow the Court's law -- instruction and  
11 the law. And it says, Your verdict must be in favor of Timothy  
12 Runnels if one of those three things is found. Actively  
13 resisting arrest. We know that. That plaintiff was failing to  
14 comply. We know that. That Defendant Runnels continued the  
15 discharge unintentionally. We know that.

16 So because of Instruction 13, really your only  
17 option if you follow the evidence is to write the name Timothy  
18 Runnels on this line. And you have to forgive my handwriting.  
19 This is an awkward angle. But I think you get the point. If  
20 you follow the law, if you follow the instructions, that is  
21 really the only -- that's really the only choice you can come  
22 up with.

23 If you look at Instruction C, this is the one  
24 dealing with punitive damages. Now, I skipped B for a minute.  
25 That's the one dealing with the drop. I want to go to C. This

1 one is where you determine is Timothy Runnels liable for  
2 punitive damages? And remember the purpose of punitive  
3 damages, to punish the defendant and to deter him. He's been  
4 punished. He's been determined -- I'm sorry -- he's been  
5 deterred. So, again, if you follow the evidence, really the  
6 only thing to write on that line is "is not." The top line is  
7 for the drop -- I'm sorry -- the Taser. The bottom line is for  
8 the drop. If you follow the evidence and you follow the law,  
9 that is what your Verdict C should look like.

10 The last couple things I want to share with you  
11 all --

12 THE COURT: Mr. Cutler, you've gone 35 minutes.

13 MR. CUTLER: Did you give me a ten-minute warning  
14 and I missed it?

15 THE COURT: This is it.

16 MR. CUTLER: Okay. All right.

17 THE COURT: You've got plenty of time.

18 MR. CUTLER: Okay. Thank you, Your Honor.

19 Here's what I'm asking you all to do. A lot of  
20 times we tell juries, we give them phrases like, use your  
21 common sense, follow your conscience, all those good things.  
22 I'm telling you to do those things. I'm telling you to use  
23 your common sense. I'm telling you to follow your conscience.  
24 But I'm also telling you all to be fair, to be fair to both  
25 sides. And being fair to both sides means you follow the



1 evidence. As much as your heart may want to say, Okay, his  
2 cardiac arrest must have come from the Tasing. You just can't  
3 fill that gap in your mind without evidence; and as much as you  
4 all want to say, Well, he's just a kid and maybe he was scared,  
5 there's no evidence of that. You have to follow the evidence,  
6 and the evidence is he refused the lawful commands of a  
7 uniformed police officer. Not one command, not two commands,  
8 but several commands, repeated commands. The evidence is he  
9 resisted arrest.

10 Now, I wouldn't want to get pulled out of my car.  
11 Who does? That's not the point. We don't like getting stopped  
12 by police officers. None of us really does. But it happens.  
13 But when a police officer says, "You're under arrest," you have  
14 to comply with what that police officer tells you to. You can  
15 go to court and figure it out later. But a when police officer  
16 says, "You're under arrest," you have to comply with what that  
17 police officer says. When you don't, that is resisting arrest.

18 Now, the resisting arrest, when you look at it in  
19 the big picture, like, well, yeah, he was arrested but then the  
20 officer dropped him on the ground. I get that. Two separate  
21 things, two separate damages, two separate considerations.

22 So as you listen to the evidence -- I'm sorry -- as  
23 you deliberate on the evidence and as you come to your verdict,  
24 somebody's got to be the voice back there because you all are  
25 going to get to talking and somebody's going to say this and

1 somebody's going to say that, and somebody's not going to agree  
2 with somebody initially, and you all will go back and forth,  
3 and that is fine. That's part of the jury deliberative  
4 process. But somebody is going to have to say at some point,  
5 Okay, but wait, there's no evidence of that. Then you'll get  
6 to talking again and you'll get to talking, Well, remember what  
7 Dr. So-and-So said and Dr. So-and-So said, any maybe this is  
8 this and maybe this is this. Somebody has then got to say,  
9 But, wait, there's no evidence of that. And so as you get to  
10 talking and as you get to talking and as you get to talking and  
11 deliberating and trying to come up with an answer, I implore  
12 you to follow the evidence.

13           When you get back to the jury room -- we introduced  
14 some exhibits. You can all ask for the exhibits. Just send a  
15 note down to the judge saying we want the exhibits so we can  
16 look at them. The judge will respond to your note accordingly.  
17 But look at the evidence. If you want to review the video, you  
18 can ask the judge for that.

19           But I'm just -- this was a bad deal, and I don't  
20 want anybody here to think that I'm just like, well, it just  
21 happened. He's not entitled to anything so just send him home.  
22 It's not that. It's not that at all. This was a bad deal all  
23 the way around. It's a bad deal for plaintiff definitely.  
24 It's a bad deal for Officer Runnels. So I'm asking you all to  
25 be fair and just listen to the evidence.

1           The evidence is unfortunately that as relates to the  
2 Tasing is there's just no medical connection for that and Bryce  
3 is not having any continuing problems that he's told you about.

4           As it relates to the drop, bad situation, but he's  
5 not having any ongoing problems related to the drop. And  
6 whatever you think Bryce might be entitled to, no way in the  
7 world, no way under God's green earth, as my mother would say,  
8 is he entitled to \$8 million. If he wanted \$8 million, he  
9 should have come in here and told you that. With all the  
10 evidence, there's no way that he's entitled anywhere near \$8  
11 million.

12           Be guided by your conscience. Be guided by your  
13 common sense. Be guided by the evidence. Ladies and  
14 gentlemen, thank you very much for your time and attention.

15           THE COURT: Mr. Presley, you have 14 minutes.

16           MR. PRESLEY: Thank you, Your Honor.

17           PLAINTIFF'S REBUTTAL CLOSING ARGUMENT

18           MR. PRESLEY: No kid or young man now should have to  
19 come in this courtroom and relive the events of that day,  
20 especially when he can't contribute a thing in his memory about  
21 what happened, his complete amnesia for those events on that  
22 day or most of the time in the hospital. That's the way brain  
23 injuries work. So if there's anybody to blame for not bringing  
24 Bryce, it's me. But if there's anybody who needed him here,  
25 really wanted him here, wanted to cross-examine him, Mr. Cutler

1 could have brought him here. All he had to do was ask.

2 MR. CUTLER: Your Honor.

3 THE COURT: That's not a proper argument to make.  
4 Mr. Masters was not equally available to Mr. Cutler.

5 MR. PRESLEY: So not only does Bryce Masters not  
6 need to be in this courtroom, no kid should ever, ever be here  
7 again, and that's the importance of your decision. That's the  
8 importance and the ramifications. That's the bell that will  
9 ring from coast to coast in this country for the future.

10 And let's look at that because when he has the  
11 opportunity to talk to you about punitive damages, he actually  
12 told you you need to find that there is not punitive liability  
13 for the drop. And so let's look at the standard. It's not  
14 just to deter the defendant. It's to deter the defendant and  
15 others from engaging in similar misconduct in the future. This  
16 is your opportunity to tell the country what the constitution  
17 means. And this is the standard that you have to find. And  
18 you have to find that Timothy Runnels' conduct was malicious or  
19 reck -- and malicious is normally defined in these instructions  
20 and may be, and/or that it's recklessly indifferent to  
21 plaintiff's federally protected rights. And that's the  
22 standard. Is he being reckless? I don't know if he was just  
23 having a bad day or what, but Bryce just got under his skin and  
24 he decided to throw all of his training about how to minimize  
25 conflict out the window; but when you shoot a kid and dot him

1 up with a laser target on his chest from literally point blank  
2 range, I mean, this is just -- that is just right there. That  
3 is indifferent to the rights when you've been trained.

4 Keith says there is no evidence that the Taser is  
5 connected. The very manufacturer of this weapon tells you  
6 exactly why you don't shoot him in the chest and why you don't  
7 hold the trigger down for prolonged exposures. It's because  
8 you'll send them into cardiac arrest. The very manufacturer of  
9 this weapon makes that connection.

10 You heard Dr. Dennis. He talked about the  
11 Taser-backed studies that showed that. And why do you think  
12 they changed their warning? Because it's true. And so when  
13 you see the temporal relationship, you're perfectly capable of  
14 seeing what's happening and putting the pieces together,  
15 especially with the aid of the science that Mr. Burton brought  
16 you from Dr. Dennis. I mean, that's well within everybody's  
17 common sense and reasoning when you see an event like that.  
18 It's as if he said, Well, there's no evidence that dropping him  
19 face first on the pavement didn't break those teeth that we saw  
20 on the report. I mean, there's a causal temporal relationship  
21 between these events, and it's witnessed on the video. It's  
22 not based on some reconstruction or some speculation. It's  
23 based on actual observation of the patient as he's undergoing  
24 the mechanism of injury, and that's what both Dr. Arkin and Dr.  
25 Dennis got to say.

1           And so what's the significance of the drop with  
2   respect to the brain injury? Dr. Arkin told you you've got  
3   that critical four-minute window. That's that four-minute  
4   window when you pull the kid out of the pool, he's not  
5   breathing, he's unconscious, you pump the water out of his  
6   lungs, you breathe into his mouth, you get him going again, and  
7   he's fine, and he's fine because he's within the four-minute  
8   window. But every minute that goes on beyond that, that damage  
9   is occurring to the brain. It's affecting all of the areas of  
10   the brain because it's no longer getting the oxygen it  
11   desperately needs. If you're going to get oxygen, you're going  
12   to have to breathe. You're going to have to have a clear  
13   airway and be able to inflate those lungs. That's how you get  
14   back. That's how you get yourself righted, and it was  
15   foreclosed here. It was foreclosed by an intentional drop to  
16   the pavement.

17           And, further, it was imposed intentionally because  
18   there was no effort whatsoever to assess Bryce's status. None.  
19   None. After all that. I mean, you just saw those guys just  
20   standing around.

21           MR. CUTLER: Your Honor, objection.

22           THE COURT: Objection sustained. There was no  
23   obligation to medically intercede.

24           MR. PRESLEY: So the most important thing when it  
25   comes to punitive damages is that you remember, and Your Honor

1 read this instruction to you, that you must read all of the  
2 instructions as a whole and no one instruction is more  
3 important than the others. In fact, his Honor changed No. 18  
4 to read that he did not resist arrest or fail to comply or  
5 the discharge was not intentional as submitted under  
6 Instruction 13. And it's as submitted in Instruction No. 13  
7 that it is all as the Taser was discharged, continued the Taser  
8 discharge. And that's why the conduct that's submitted in  
9 Instruction 12 is limited to the prolonged 15-second delivery  
10 of the Taser into Bryce's chest.

11 So when we look at 12 and we look at those factors, I  
12 think it's important to realize what the instructions say about  
13 excessive force; and in determining whether the force was  
14 excessive, you must consider the need for the application of  
15 force. That goes right back to the policy. Where's the  
16 immediate threat of harm? Where's the need for any force at  
17 all?

18 The next factor is the relationship between the need  
19 and the amount of force used. We've already told you it's all  
20 right if you were going to Tase him. Drive stun him, shoot him  
21 with the probe mode even, but don't shoot him in the chest and  
22 don't hold it down for 20 seconds.

23 What is the extent of the injury inflicted? He was  
24 taught and trained by the very manufacturer of this device that  
25 cardiac arrest was a known risk of shooting people in the

1 chest, and Dr. Dennis brought you the studies that proved it.  
2 And one other factor here is what are the circumstances? What  
3 is the need for this whole event? Tinted windows. Is this a  
4 violent felon? Is this a fleeing felon? Tinted windows is a  
5 ticket. It's a misdemeanor municipal charge. You go down to  
6 court. You pay the fine. You mail it in. You don't even  
7 appear. That was what led to this whole event. Not some  
8 maniac brandishing a sword. Not someone naked and  
9 schizophrenic and threatening his family or others. Where's  
10 the danger to anyone other than Bryce Masters in this case?

11 And so when you look at the excessiveness of the  
12 force and you look at the continuum that was available to  
13 Officer Runnels, he went directly to the maximum. He went  
14 directly to a level. And that's just inappropriate for a guy  
15 who's been pulled over on a traffic stop because -- until he  
16 got back to the station house, he never even came up with  
17 tinted windows. You heard him tell his sergeant on the video,  
18 He ditched me, and he didn't like that.

19 So when he got up to the car, he wants to say Bryce  
20 didn't roll the window down. But what do we see on the video  
21 when the officer goes over to start checking the vehicle? The  
22 window's practically all the way down, maybe three-fourths of  
23 the way down. You can hear Bryce's voice change on the audio  
24 of the Runnels' dash cam video. He says, I can hear you. Then  
25 he says, Roll it all the way down. Then you hear Bryce again.



1 And he goes, Roll it all the way down. He said, I can hear  
2 you. It's real loud. And then we saw the position of the  
3 window. So what are they going to say? Bryce was busy  
4 rolling the window down as he was rolling the left rear window  
5 down for the officer when he came around the car because the  
6 passenger -- or the driver's side window didn't work.

7 And so what do they want you to believe about all this  
8 marijuana? What was the point of all of that? There's a way  
9 to arrest people for marijuana possession and it doesn't  
10 involve Tasing them into cardiac arrest.

11 THE COURT: Mr. Presley, five minutes.

12 MR. PRESLEY: In fact, they did it properly in  
13 August and Bryce never resisted. Bryce never put up a fight.  
14 There was no evidence of that. That's how you do it properly.  
15 This is how you do it improperly. This is how you do it when  
16 you violate somebody's constitutional rights.

17 So no kid should have to come into this courtroom  
18 and have to relive these events and hear how deficient he is,  
19 hear how he struggles, hear -- we want Bryce to go to college.  
20 He want him to turn the corner. We want him to have a future.  
21 But we're realistic and we know what he struggles with day to  
22 day to day, and we brought you the best person to tell us what  
23 he was like before and after, the person who sees him the most,  
24 the person who tries to make sure he's okay, the person who  
25 loves him unconditionally, but who is strong and

1 straightforward with you on the witness stand, not a confused  
2 kid who can't remember what he's seen versus what he's been  
3 told versus what he's heard versus his blank spots in his  
4 memory that were erased by his cardiac arrest.

5 And so the time for lawyer talk is over, and it's  
6 time for you to speak with your voice, and we await your  
7 decision.

8 Thank you, ladies and gentlemen.

9 THE COURT: All right, ladies and gentlemen, I'm  
10 going to send you into the jury room with my instructions and  
11 the verdict form, but there are a few things I want to tell you  
12 before you go in.

13 First of all, you're free to decide among yourselves  
14 if you want to take a break and how long you want to take a  
15 break for. You need to understand, though, that although you  
16 can now, and you are, to discuss the case among yourselves, you  
17 can only do that in the jury room and you can only do that when  
18 all eight of you are there. So if someone steps out to go to  
19 the restroom or if you decide to take a break and some people  
20 are leaving before others, you have to stop talking about the  
21 case when less than all eight of you are there; and when the  
22 break is over, you have to wait for everyone to come back  
23 before you can resume your discussions about the case.

24 If you decide to take a break, I ask that you keep  
25 it to 20 minutes or less, but just let Lisa know when you're

1 going to break and how long you're going to break for; and  
2 obviously when you do break, you're free to go out in the hall  
3 or wherever you want to go, but if anyone's talking about the  
4 case in your presence or tries to approach you, you let Lisa  
5 know about that so I can deal with it.

6 All of the particulars of the instruction I've given  
7 you before. You can't do any research. You can't talk to  
8 anybody else about the case. You can't read, view, or listen  
9 to any media reports about the case. All of those particulars  
10 remain in effect until you have finally decided the case and  
11 rendered all of your verdicts in this case.

12 Now, one other thing that I have to tell you is  
13 there is going to be some alarm testing taking place in the  
14 building today after hours, but I do ask that if it's around  
15 five o'clock and you're not ready to make a decision, that you  
16 let me know and we're going to come back tomorrow morning.

17 And as you can see in the forms, there is a two-part  
18 depending on the decisions that you make in the case initially;  
19 and if that was to occur, we would likely resume that tomorrow  
20 at any rate.

21 So with that, here are my instructions and my  
22 verdict forms. Lisa has some extra copies of the instructions  
23 that you can share among yourselves as well.

24 So thank you, ladies and gentlemen, and please  
25 retire to the jury room to begin your deliberations.

1           (The case was given to the jury at 3:09 p.m. on  
2 Thursday, December 13, 2018, and the jury retired to their room  
3 to deliberate on their verdict.)

4           (The following proceedings were had in the courtroom  
5 out of the presence of the jury:)

6           THE COURT: All right. Thank you all. While the  
7 jury's deliberating, Lisa will let you know if they take a  
8 break and you can go for a break yourself. I ask that one of  
9 the attorneys from each side either remain present in the  
10 courtroom or let Lisa know where you can be contacted. If we  
11 get a question from the jury, I'll take it up with whoever the  
12 representative for each side is that's present in the  
13 courtroom. So we will be in touch.

14           MR. PRESLEY: Thank you, Your Honor.

15           MR. CUTLER: Thank you, Your Honor.

16           (A recess was taken.)

17           (The following proceedings were had at 4:50 p.m. in  
18 the courtroom out of the presence of the jury:)

19           THE COURT: Thanks. Everyone be seated. We just  
20 got a couple of questions from the jury.

21           MR. CUTLER: Your Honor, if you could wait a moment.  
22 I think they're bringing Mr. Runnels in.

23           THE COURT: Okay.

24           MR. CUTLER: Thank you.

25           THE COURT: So the first question is, "What is

1 documentation for past and future economic figures presented by  
2 plaintiff's counsel?" I don't remember any documentation per  
3 se being entered in evidence. I would be inclined to tell the  
4 jury in response to that that they will have to recall the  
5 evidence on that matter.

6 MR. PRESLEY: Yes.

7 MR. CUTLER: That's agreeable.

8 THE COURT: The second question is, "Any  
9 documentation on medical bills paid by Bryce's family." And my  
10 answer to that will be no.

11 MR. PRESLEY: I think it would be the same. There's  
12 no evidence.

13 THE COURT: The expert witnesses refer to various  
14 sources that they relied upon.

15 MR. PRESLEY: There's no evidence of medical.

16 THE COURT: No evidence of medical bills paid.

17 MR. CUTLER: I mean, Kirk made a reference in  
18 closing, but there is no evidence.

19 MR. PRESLEY: To what?

20 MR. CUTLER: I said you made reference to  
21 hospitalization or the cost of hospitalization, I think is how  
22 you phrased it, but there was no bills in evidence.

23 MR. PRESLEY: I don't think I ever mentioned the  
24 cost.

25 THE COURT: I don't think so either. So here's what

1 I've said, "You will have to recall the evidence presented by  
2 plaintiff's witnesses on past and future economic figures."

3 Any objection, Mr. Presley?

4 MR. PRESLEY: I think it would just be as to future.  
5 There was no evidence on past loss. We started at age 22, a  
6 year from now, for Bryce.

7 THE COURT: Well, they want documentation on past  
8 and future economic figures.

9 MR. PRESLEY: All right. Then just have to remember  
10 the evidence on that issue.

11 THE COURT: "You will have to recall the evidence  
12 presented by plaintiff's witnesses on past and future economic  
13 figures."

14 Then the second question was, "Any documentation on  
15 medical bills paid by Bryce's family." I'm going to respond,  
16 "There was no documentation presented on medical bills paid."

17 MR. PRESLEY: Fair enough.

18 THE COURT: Mr. Cutler. Question is, "Any  
19 documentation on medical bills paid by Bryce's family." And  
20 rather than just saying no, I'm kind of repeating their  
21 question, "There was no documentation presented on medical  
22 bills paid."

23 MR. CUTLER: Right. My concern is the Court's  
24 response is no documentation of medical bills paid presumes  
25 that the medical bills were paid. So if you respond there was

1 no documentation on medical bills, period.

2 MR. PRESLEY: Which is fine by me, Your Honor.  
3 Because that's exactly right.

4 THE COURT: Thank you.

5 Now, additionally, the jury advised Lisa that they  
6 were not going to reach a verdict today, and they want to know  
7 if they were supposed to wait to hear from me before they could  
8 go home. I'm going to have Lisa take my response in to them  
9 here and tell them to let her know if they're ready to go home,  
10 to adjourn for the day and go home. If they are, I'm going to  
11 call them back in and talk to them about their obligations as  
12 jurors at this point in the case.

13 MR. PRESLEY: Perfect.

14 MR. CUTLER: Is it their choice as to whether they  
15 stay or not?

16 THE COURT: No. I told them that they would need to  
17 leave about five o'clock today because we're going to have some  
18 alarm testing that's supposed to begin around six, and I wanted  
19 to give time for everybody to have a chance to clear out; and  
20 never knowing if they come back with something at five o'clock,  
21 I just wanted to build a cushion in there for them to make sure  
22 they were out of here. So that's what they're reacting to is  
23 my comment to them that we're going to need to be out of the  
24 building for the testing that's going to take place later.

25 I'm going to have them come back in at 8:45 in the

1 morning, then you all be back at the same time.

2 MR. PRESLEY: The only other matter, Your Honor,  
3 was, assuming we need to get to that, Mr. Denk did file a  
4 motion to quash on relevancy as to the insurance issue.

5 THE COURT: Why don't I have Lisa go ahead and take  
6 this in, and my guess is the jury is going to say they want to  
7 come back. They're done. They want to go. So she'll bring  
8 them in, if that's the case. Then after they leave we, can  
9 talk about other matters.

10 (A recess was taken.)

11 THE COURT: Thank you. You can be seated.

12 Ladies and gentlemen, Lisa tells me that you are  
13 ready to go home for the evening and that's fine. We  
14 appreciate your work today.

15 I did want to make sure, though, that you understand  
16 that since you're deliberating, you are to discuss the case  
17 with yourselves, among yourselves, but only in the jury room  
18 and only when all eight of you are there. I'm going to have  
19 you come back at 8:45 again tomorrow morning, but you cannot  
20 begin deliberations until all eight of you are there.

21 You still are not allowed to do any research on  
22 anything that's been mentioned in the course of the case. You  
23 can't get on the Internet. You can't go to a dictionary. You  
24 can't make an effort to try to talk to somebody who you think  
25 might be knowledgeable. You still can't talk to your family



1 members other than to tell them what your schedule is here.  
2 You got to come back tomorrow morning. We don't know what the  
3 time frame is going to be, but likely you'll have a decision,  
4 if not tomorrow, by the first of next week. But that's all  
5 going to be totally up to you at this stage. So the schedule's  
6 a little bit unknown at this point.

7           You're not to read, view, or listen to any media  
8 reports of the case. So it really is important that you just  
9 stay away from local media sources and outlets so that you  
10 don't inadvertently come across something that might be  
11 improper.

12           Again, if anybody is talking about the case or  
13 attempts to approach you about the case, you are to let Lisa  
14 know about that so that she can pass that along to me.

15           So you all have a good evening and we'll see you  
16 again tomorrow morning at 8:45.

17           Now, when you get here at 8:45 and everybody is  
18 here, please let Lisa know; but as soon as everybody is here,  
19 you don't need to come back into court. I don't need to talk  
20 to you or anything again. You just go ahead and resume your  
21 deliberations in the case.

22           Thank you very much.

23           (The following proceedings were had in the courtroom  
24 out of the presence of the jury:)

25           MR. PRESLEY: So, yes, Mr. Denk was just kind of

1 curious as to a time frame that he might need to appear  
2 tomorrow morning on that motion, if the Court wishes to take it  
3 up.

4 THE COURT: Do I have an option there?

5 MR. PRESLEY: Well, I mean technically our response  
6 is due in 30 days or whatever the Court docketed it for. I  
7 mean, we obviously would like to take it up.

8 THE COURT: Sure. Well, do you want to do it at,  
9 what, nine o'clock in the morning?

10 MR. PRESLEY: Sure. Let me just check if there's  
11 anything going on or if there's a better time for him.

12 THE COURT: Just tell him nine or ten and you can  
13 tell us in the morning.

14 MR. PRESLEY: He usually gets right back to us on  
15 this. He's good about checking his emails.

16 THE COURT: If we go to a punitive phase, I mean, I  
17 don't imagine -- I mean, do you want to talk about how much  
18 time you want for opening statements?

19 MR. PRESLEY: In fact, I would waive opening, Your  
20 Honor, and go directly to the evidence.

21 THE COURT: Mr. Cutler?

22 MR. CUTLER: Fifteen minutes.

23 THE COURT: All right. Well, you all think about  
24 it, and we'll take it back up in the morning.

25 MR. PRESLEY: Opening is when we tell the jury what

1 we expect the evidence to be, and I think the evidence is going  
2 to be so brief that it will speak for itself, at least from our  
3 standpoint.

4 THE COURT: I'll take it back up with you in the  
5 morning, and we can take up the motion at nine or ten, either  
6 one is fine with me.

7 MR. PRESLEY: I'll just circulate the email to Lisa  
8 and Rhys when this comes in.

9 THE COURT: That would be great.

10 (Court adjourned at 5:09 p.m. until 8:45 a.m.  
11 Friday, December 14, 2018.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25